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NEW YORK MTA PURCHASE OF CANADIAN SUBWAY CARS

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HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

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NEW YORK MTA PURCHASE OF CANADIAN SUBWAY CARS

FRIDAY, MAY 28, 1982

U.S. SENATE,
SENATE FINANCE COMMITTEE,
Washington, D.C.

The committee met, pursuant to notice, at 9:37 a.m. in room 2221, Dirksen Senate Office Building, the Honorable Bob Dole (chairman) presiding.

Present: Senator Dole, Senators Heinz, Bentsen, and Moynihan.

[The press release announcing the hearing and Senator Dole's opening statement follow:]

[Press Release No. 82-137, May 24, 1982]

FINANCE COMMITTEE SETS HEARING ON NEW YORK MTA PURCHASE OF CANADIAN SUBWAY CARS

Senator Bob Dole, Chairman of the Senate Committee on Finance, announced today that the committee will hold a hearing on Friday, May 28, 1982, on the purchase of Canadian-built subway cars by the Metropolitan Transit Authority of New York City. Chairman Dole noted that the contract for delivery of the cars is reported to include provisions for Canadian Government subsidization of the interest payable. Chairman Dole stated that among other issues the hearing will seek information on whether the reported interest subsidies are actionable under U.S. countervailing duty law.

Chairman Dole also stated that information will be sought as to whether the MTA has sought or will seek to sell tax benefits with regard to such equipment under the safe harbor leasing rules currently in effect.

Chairman Dole indicated that the witnesses would be restricted to a Government panel and representatives of the MTA and the domestic subway car industry.

The hearing will begin at 9:30 a.m. in room 2221 of the Dirksen Senate Office Building.

STATEMENT OF CHAIRMAN BOB DOLE

The New York Metropolitan Transit Authority's purchase of Canadian-built subway cars poses fundamental tax and trade policy issues.

THE TAX ISSUES

Safe-harbor leasing is not a new issue for the Finance Committee. Concerned about widespread reports of abuse, we first held hearings on the operation of the safe-harbor leasing rules on December 10 of last year. We have held additional hearings in March. The focus of these previous hearings has been the private use of safe-harbor leasing.

The 1981 Economic Recovery Tax Act also created a version of safe-harbor leasing for public transit authorities. Under this provision, mass transit authorities like the MTA can sell tax title to their subway cars and buses to private taxpayers who may then claim the depreciation deductions—but not the investment tax credit.

Some have criticized this mass transit leasing provision because it creates new tax deductions, unlike the usual leasing provisions which only permit the transfer of

tax deductions. Others have suggested that allowing the use of safe-harbor leasing for property produced abroad should be specially limited. Finally, others have criticized the efficiency of mass transit leasing.

But mass transit leasing is not without its defenders. One of the most articulate spokesmen is Richard Ravitch, the chairman of the MTA. I look forward to hearing this morning's testimony on this important issue.

THE TRADE POLICY ISSUES

The trade policy issues are of equal consequence. The basic question is what this Government is prepared to do when American producers are forced to compete against foreign producers and workers being subsidized by their governments. If I were on the MTA, it would be my inclination to look for the best deal possible on subway cars. But if I were a worker in New York City or anywhere else and my job was in jeopardy because a foreign government was subsidizing exports to the U.S. market of the product I made, I would look to my Government for help. I would also expect them to do something.

In the long run, the answer is the elimination of export credit subsidies. For some time now, the U.S. Government has been attempting to negotiate a new agreement on such subsidies. Deepite a determined effort, however, our negotiators have met with little success. Just yesterday, the Washington Post carried a story detailing Ambassador Brock's frustration over the failure of our trading partners to conclude an agreement governing the use of this uneconomic and basically foolish practice.

It makes no sense at all for any industrialized country to engage in the uneconomical production of a particular product and then seek to make the product comptitive by susidizing its export to another industrialized country through guarantees of below market rate financing. Unless we can agree to mutually eliminate this practice, every country, including the United States, will eventually be forced to subsidize their export credit rates and, in addition, to protect their domestic markets. It would indeed be unfortunate if we are forced to do this to protect jobs in this country. Not only would the U.S. Government have to tax its citizens to support the purchases of our products by consumers in other countries, but there will be added pressure to reject the current trading rules which are already under fire.

In the short run, there are a number of avenues in our laws which the administration must consider employing. Subsidized interest at rates below the OECD guidelines are specifically prohibited by the subsidies code. The administration may consider instituting a 301 case and proceeding through the international dispute settlement process against such subsidies.

Subsidized interest at any rate may be actionable under U.S. contervailing duty law. I would suggest that the administration may wish to consider self-initiating a countervail case or working with the domestic industry to expedite the filing of a case.

Section 1912 of the Eximbank Act provides yet another possible avenue for action. I know Senator Heinz has been working with the domestic industry on the use of this statute under which the Secretary of Treasury may authorize the Eximbank to provide matching financing to a domestic industry facing competiton from imports subsidized at below market interest rates.

It may also be possible to bring an action under section 201, our general import relief law. I urge the administration to carefully evaluate the facts and policy implications of the MTA contract and then if necessary, proceed expeditiously under one or more of these authorities.

The issues raised here are becoming increasingly familiar acroes our domestic industries. General aviation aircraft producers in Kansas face competition in both this market and abroad from foreign-produced aircraft financed at subsidized interest rates. Producers of heavy electrical generating equipment face the same problem. This practice is poor economic policy, it is bad trade policy, and it should be stopped.

The CHAIRMAN. Before we have the first witnesses I would like to make a brief opening statement.

We are pleased to have Senator Moynihan as a member of the committee, here, and also Congressman Rangel, a member of the House Ways and Means Committee. We will be joined later by Senator Stafford who will be here along with Congressman Lundine and Congressman Jeffords, and Representative Martin is here.

Many members have scheduling problems. The House has a problem, because they didn't get to bed until about 2 o'clock. They did good work on the budget, but we won't go into that.

I would say at the outset that we have both tax and trade policy issues involved here. This is not an adversary proceeding. We hope to obtain some facts, to obtain the administration's view and the view of those directly involved.

The New York Metropolitan Transit Authority's purchase of Canadian-built subway cars poses fundamental tax and trade policy issues.

Safe-harbor leasing is not a new issue for the Finance Committee. Concerned about widespread reports of abuse, we first held hearings on the operation of safe-harbor leasing rules on December 10 of last year. We have held additional hearings in March. The focus of these previous hearings has been the private use of safe-harbor leasing.

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But mass transit leasing is not without its defenders. One of the most articulate spokesmen is Richard Ravitch, the chairman of the MTA. He will be here later this morning.

Moving to the trade policy issues, I think they are of equal consequence. The basic question is what this Government is prepared to do when American producers are forced to compete against foreign producers and workers being subsidized by their governments. If I were on the MTA, it would be my inclination to look for the best possible deal on subway cars. But if I were a worker in New York City or anywhere else and my job was in jeopardy because a foreign government was subsidizing exports to the U.S. market of the product that I made, I would look to my Government for help. I would also expect them to do something.

In the long run, the answer is the elimination of export credit subsidies. For some time now, the U.S. Government has been attempting to negotiate a new agreement on such subsidies. Despite a determined effort, however, our negotiators have met with little success.

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rate financing. Unless we can agree to mutually eliminate this practice, every country including the United States will eventually be forced to subsidize their export credit rates and, in addition, to protect their domestic markets. It would indeed be unfortunate if we are forced to do this to protect jobs in this country. Not only would the U.S. Government have to tax its citizens to support the purchases of our products by consumers in other countries, but there will be added pressure to reject the current trading rules which are already under fire.

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Subsidized interest at any rate may be actionable under the U.S. countervailing duty law. I would suggest that the administration may wish to consider self-initiating a countervail case or working with the domestic industry to expedite the filing of a case.

Section 1912 of the Export-Import Bank Act provides yet another possible avenue for action. I know Senator Heinz, who will be here later, has been working with the domestic industry on the use of this statute under which the Secretary of the Treasury may authorize the Exim Bank to provide matching financing to a domestic industry facing competition from imports subsidized at below-market interest rates.

It may also be possible to bring an action under section 201, our general import relief law. I urge the administration to evaluate the facts and policy implications of the MTA contract, and then, if necessary, proceed under one or more of these authorities.

The issues raised here are becoming increasingly familiar across our domestic industries. General aviation aircraft producers in my State of Kansas face competition in both this country and abroad from foreign producers of aircraft financed at subsidized interest rates. We had the same problem with heavy electrical generating equipment. This practice is poor economic policy. It is bad trade policy and it should be stopped.

I will be pleased to yield now to the Senator from New York.

Senator MOYNIHAN. Mr. Chairman, I was especially pleased to hear you say that these are not adversary hearings, and that the issues before us are not new to this committee. We have been persistently concerned with the question of how to recapitalize America, how to get our basic industries back at work and growing once more. We have sought to do this through tax policies, and we have sought to do it through international trade policies.

One of the most conspicuous elements in the emerging international trade system is the increasing subsidization of exports by foreign countries. We begin to get an atmosphere in the world which is ominously close to that of the early 1920's when what trade experts used to call beggar my neighbor policies emerged and the response was disastrous.

Ambassador Brock, who is a friend of this committee and who has been supported so very much by the chairman, just yesterday or the day before announced his very great concern, and in strong

terms that he does not ordinarily employ, that he has not been able to get out of our OECD partners an agreement on reduced levels of subsidization.

Even so, this is an information hearing, and at the outset some bits of information might be useful to put in the record, Mr. Chairman.

The first of these is that the city of New York, which might appear to be in the dark today, happens to be the last city in America with mass transit that has not yet imported foreign-made subway cars. New York is not first; New York is last, and has done so as a last resort. And it would be perhaps useful, before we get too much involved in the city itself, if I just read quickly the list of cities that have already imported foreign subway cars—it takes some time because it is of some length, but there aren't that many transit systems:

Foreign manufacturer orders

Atlanta: Heavy rail—Franco-Belge, France (1979, 1980, 1981)	119
Boston:	
Heavy rail—Hawker Siddeley, Canada (1979, 1980)	190
Commuter cars—Hawker Siddeley, Canada (1967–74)	14
Buffalo: Light rail—Tokyo Car, Japan	33
Chicago: Commuter cars—Bombardier, Canada (1978, 1979)	36
Cleveland:	
Heavy rail—Tokyo Car, Japan (1982)	60
Light rail—Breda, Italy	61
Indiana: Commuter cars—Sumaitomo, Japan (1982)	44
New Jersey:	
Heavy rail (PATH)—Hawker Siddeley, Canada (1972)	46
Commuter cars—Bombardier, Canada (1982)	117
Philadelphia:	
Heavy rail (PATCO)—Vickers, Canada (1980, 1981)	46
Heavy rail (SEPTA)—Kawasaki, Japan (1980)	125
Light rail (SEPTA)—Kawasaki, Japan	136
Pittsburgh: Light rail—Siemens-DuWag, Germany	55
Portland: Light rail—Bombardier, Canada	26
San Diego: Light rail—Siemens-DuWag, Germany	16
Washington, D.C.: Heavy rail—Breda, Italy (1979, 1981)	294

And now, God help us, as usual, New York has got to explain itself.

The CHAIRMAN. Congressman Rangel?

STATEMENT OF HON. CHARLES B. RANGEL, A U.S. CONGRESSMAN FROM THE STATE OF NEW YORK

Mr. RANGEL. Thank you, Mr. Chairman. Coming from a community with very high unemployment, this is a very sensitive issue, and we certainly hope that a Government-subsidized corporation did have the luxury to take this into consideration.

Unfortunately, with the MTA, the chairman has a responsibility to buy equipment at the less possible cost and to take advantage of any tax incentives that our joint committees have given, and to make certain that we keep that fear down.

I do hope that if it shows that any corporation is subsidizing foreign governments at the expense of our unemployed workers, that our joint committees and Congress generally can provide the type of incentives that would be necessary to make our firms competitive and, where other countries are taking unfair advantage of our

tax system, that we might be able to resolve some of those inequities.

Thank you for your courtesy in allowing me to join these hearings.

The CHAIRMAN. Thank you, Congressman Rangel.

Congressman Martin?

STATEMENT OF HON. DAVID O'B. MARTIN, A U.S. CONGRESSMAN FROM THE STATE OF NEW YORK

Mr. MARTIN. Yes.

Very briefly, Mr. Chairman, I want to thank you very much for having me here. I think it's best to demonstrate my interest up front. It cuts a number of different ways, not the least of which is the proposed awarding of the contract which was spoken to. It means that to one of the subcontractors, the biggest employer in my district, it is the biggest contract they ever had. So it is more than a passing interest that I have.

I have been discussing this with a number of people over the course of the past few months, because it does have a significant impact on my district.

I am pleased that this is, as you say, an informational hearing, and I am sure that all parties who have an interest here will be heard. I don't know if there are representatives of Bombardier, Mr. Chairman; that remains to be seen. But I thank you for having me here.

The CHAIRMAN. Thank you, Congressman Martin.

As I indicated, these are informational hearings. I don't have any quarrel with New York subways having gone to Brooklyn College years ago and ridden the subways. I assume they have different cars now.

Senator MOYNIHAN. Same cars.

The CHAIRMAN. The same cars? [Laughter.]

Senator MOYNIHAN. Mr. Chairman, they are the same cars. Different fares. [Laughter.]

The CHAIRMAN. Well, they weren't bad then. That has been a while.

In any event, we now have our first panel: The Honorable R. T. McNamar, Deputy Secretary; accompanied by Mr. William McKee, Tax Legislative Counsel, Department of the Treasury; Donald deKieffer, General Counsel, Office of the United States Trade Representative; and Gary N. Horlick, Deputy Assistant Secretary of Commerce for Import Administration.

Tim, do you want to start?

STATEMENT OF HON. R. T. McNAMAR, DEPUTY SECRETARY, DEPARTMENT OF THE TREASURY, WASHINGTON, D.C.

Mr. MCNAMAR. Thank you very much, Mr. Chairman. I think you have set exactly the right tone, and I would like to echo what Senator Moynihan said, "This is not a hearing about New York at all or the New York subways at all."

We appreciate the opportunity to address the committee regarding the purchase of Canadian subway cars by the New York State

Metropolitan Transit Authority and the relationship of this case to the multilateral negotiations on export credit.

I will focus my attention on the export credit financing questions, Gary Horlick will discuss the countervailing duty aspects of the case, and Don deKeiffer the GATT obligations involved.

I am sure you are familiar with the facts as they have been published in the press. I might briefly review them here, so that we have a common basis for discussion.

In early March the MTA announced its decision to purchase 325 subway cars, the first installment under its modernization plans, from Kawasaki Heavy Industries of Japan. The $274 million contract was backed by a loan from the Export-Import Bank of Japan to Kawasaki. The loan was denominated in yen in an amount equivalent to $126 million, with an interest rate of 9 percent and a term of 5 years. Kawasaki, a private firm, then re-lent the money to the MTA in dollars, adding a surcharge of $40,400 per car to cover the foreign exchange risk involved. With this surcharge, the effective dollar interest rate paid by the MTA was 12.25 percent.

This was not a case of subsidized export financing in violation of international agreements. The market interest rate—that is, the Japanese long-term prime rate—in the yen capital market was 8.6 percent at the time this offer was made.

Further, at the time the Japanese made their final offer to the MTA last November 6, the minimum rate they were required to charge under the international arrangement on export credits was 8.75 percent. Consequently, at a 9-percent yen rate, the Japanese were well within the parameters of the arrangement on export credits and were charging the market interest rates.

Several months later the French Government apparently supported a bid from a French group for an additional 825 cars. While we are in the process of confirming the details with the Governments of Canada and France, the following appear to be the facts:

In the mistaken belief that Kawasaki was still in the competition for 400 of these cars, French financing for 400 cars was offered in francs at a basic interest rate of 8.5 percent for 5 years. For the remaining 425 cars the French offered an 11-percent rate of interest in conformity with the arrangement on export credits. This blend of rates, plus guarantee fees and exchange risk insurance fees, resulted in a total effective interest rate of 9.7 percent for a dollar loan.

In response to the French bid, Canada indicated it was prepared to match the French interest rate of 9.7 percent. To exceed the French bid, the Canadians reportedly stretched the payment term out to at least 8.5 years. Subsequently, the French in turn matched that term.

This type of bidding on credit terms is typical of what goes on in official export credit competition.

Mr. Chairman, the 9.7-percent interest rate ultimately offered was far below the market rate in francs or dollars and was a derogation from the minimum arrangement interest rates for sales to so-called category I countries like the United States.

Although not quoting a yen-denominated loan, the French asserted they were simply matching the Japanese offer as permitted by the arrangement.

On May 18 the MTA announced that it would award a contract for the second installment of 825 cars to the Canadian firm, Bombardier of Montreal. The financing was reported by the press to include total coverage of $563 million, or 85 percent of the $663 million contract price; interest at 9.7 percent in dollars; terms of 10 years—that is, the principal to be repaid in 20 equal semiannual installments beginning 6 months after delivery of the last car in 1987 (this would essentially be a 15-year loan); and Bombardier reportedly has agreed to reimburse the MTA for any countervailing duties which it may be assessed.

We are in the process of confirming these details with Canada.

What is apparent at this point is that this is a highly subsidized financing package extended by a foreign government. Using the average AAA bond rate in 1981 as a bench mark of average market rates and a term of 15 years, the 9.7-percent rate involves a subsidy of about $230 million on the $563 million loan. I don't know how Canadian taxpayers look at this, but I would find it hard to justify such a subsidy out of the American taxpayers' pockets.

Under the international arrangement on export credits, the maximum term for officially supported trade finance to countries such as the United States is 8.5 years after acceptance of the goods. Since last November 16 the minimum interest rate has been 11 percent for terms of 2 to 5 years, 11.25 percent for terms of 5 to 8.5 years. Thus, if confirmed, both the interest rate and the term of the Canadian offer would derogate from the arrangement. And, of course, it is even further below the prevailing market interest rates.

I should say that the Canadians had notified us in early May that they were offering financing that would derogate from the arrangement guidelines. They did not provide details but said their purpose was to match the French.

The French, for their part, appeared to have left the same offer on the table that they provided for the first purchase when they were competing with the Japanese. But the Japanese are not presently competing. And, in any case, bids for this second contract should be at the post November 16 rates. This is at least 11.25 percent, not 9.7 percent.

On the evening of May 17 the Treasury Department received a Telex from Budd Co. asking us to invoke section 1912 of the Export-Import Bank Act. I have attached as appendix A a text of section 1912 to this testimony for the convenience of the committee. Briefly, it requires the Secretary of the Treasury to take three steps:

First, on receipt of information that financing is being offered from abroad on imports into the United States in contravention of international standstills, minutes or practices, to which the United States has agreed, Treasury is to investigate the facts.

Second, if they are as alleged the Secretary is to urge the offering country to bring the terms and conditions of its financing into conformity with the relevant undertaking—in this case, the arrangement on export credits.

Third, if a satisfactory response is not received the Secretary is empowered under certain conditions to authorize the Export-

Import Bank to match the foreign financing and to notify the foreign government of this action.

Immediately on the receipt of the Budd request, we asked the American Embassies in Paris and Ottawa to confirm the details of the French and the Canadian offers. If the offers were not in conformity with the minimum arrangement guidelines, the Embassies were requested to urge the host governments to make them conform. Our Embassies have requested this confirmation.

To date, the response from Canada is that a financing offer derogating from the arrangement has been suggested but not formally offered. The details cannot be released until the board of directors of the Canadian Export Development Corp., which is the equivalent of our Eximbank, meets and approves the offer. We understand this is standard EDC policy.

From Paris we have been informed that the financing was a derogation from arrangement guidelines but that it was to match what they thought was a Japanese yen loan at an 8.5-percent interest rate.

We are continuing our efforts to confirm the facts. If we do not receive satisfactory replies in sufficient time for us to take any necessary action before a binding contract actually is signed by the MTA, we will have to proceed on the basis of the best information we have.

I find this situation both frustrating and ironic. We have been told that the Canadian bidder, Bombardier, intends to assemble the cars in Vermont and purchase other U.S. components so that the U.S. content will be approximately 40 percent. Moreover, Canada has been our staunchest ally in trying to eliminate official export credit subsidies. And here we are, facing Canada over an export credit subsidy issue. This is pure folly.

Indeed, there is a further irony in this case if the Budd Corp. were to win the bid. This is difficult to follow, but the Budd Corp. is a wholly owned U.S. subsidiary of the German Theissen Steel Corp. The Budd offer is being supported by export credits from newly developing industrial nations. Specifically, newspaper reports indicate that the Budd Corp. bid was to be supported by subsidized export credits from Portugal and Brazil for components of the subway cars to be produced in Portugal and Brazil, exported to the United States for final assembly by Budd and sale to the MTA. This means that two nations who have often been recipients of development aid are, in effect, subsidizing the American purchase of industrial goods.

Anyone who witnesses this type of spectacle must appreciate the distortions that wasteful export credit competition imposes on world trade. Obviously, the U.S. Government feels that these types of subsidies should not be provided to so-called category I countries such as the United States by category II countries such as Portugal and Brazil. This is the type of practice those category I countries who permit the use of subsidized export credits are causing. It is simply ludicrous for Portugal and Brazil to be subsidizing credits to the United States.

Well, returning to the status of the Treasury's inquiry into the Canadian and French bids, we have been making and will continue to make urgent representations in both Paris and Ottawa, urging

the Canadian and French Governments to revise their offer so as to at least conform with the arrangement on export credits.

The bidding for both the MTA subway contracts has taken place at a time when the interest rates permitted under the international arrangement for export credits were substantially below market rates.

The first contract—I remind you it was awarded in March—was decided under minimum rates prevailing until last November 16. The current bidding is going on under rates which are higher than previously but still allow considerable subsidization.

The case in hand provides a perfect example of the undesirable consequences of competitive export credit subsidization. These are: heavy budgetary drains on the exporting government; reduction in the gains of trade to the exporting country; loss of business and jobs by other exporters or by import-competing industries; distortions in trade flows; and increasing friction in this instance between ourselves and some of our oldest friends and allies.

Mr. Chairman, we feel strongly that American companies and American workers can compete in the world marketplace on the basis of price, quality, and service of their products. We find it disturbing that a major contract such as this, involving vital interests of American industry, workers, taxpayers, and communities may be decided by the use of predatory financing in distortion of competitive market forces.

Both of the foreign bidders involved are located in countries that are parties to the arrangement. Neither country is required to derogate from the arrangement in order to be assured a fair chance to compete in the American market. By offering highly subsidized Government financing not available domestically in the United States, Canada, and France will be placing the American industry at an unfair competitive disadvantage.

As the committee knows, on May 7 we completed OECD negotiations aimed at mitigating these problems by reducing the degree of subsidies governments are permitted to offer under the international arrangement. We were not able to achieve as much as we might have wished in these talks, since some of our European trading partners were unwilling to accept all of the changes we put forward. The chairman of the meeting, therefore, proposed a compromise which, by a combination of modest increases in interest rates and reclassification of borrowing countries, would raise the weighted average interest rates which must be charged by governments in official export credits by about 1.4 percent.

The resulting weighted average rate which would be charged by other export credit agencies would be about 11.6 percent compared to the Eximbank's standard rate of 12 percent.

I have attached as appendix B a summary of the compromise proposal for the committee's information.

While the compromise falls short of our initial objectives, we believe it represents sufficient progress and have indicated our acceptance. Almost all delegations did likewise.

Unfortunately, the European Community requested a postponement of the deadline for reply from May 25 to June 15.

The administration had some misgivings about this postponement, Mr. Chairman, since we are not willing to reopen negotia-

tions on what would be, from our point of view, an acceptable but certainly not one-sided deal. We determined, however, that flexibility as to timing would be the wiser course, lest we risk losing a potential agreement altogether. Consequently, we notified the OECD Secretariat of our acquiescence in the postponement. The new deadline will be after the Versailles Economic Summit next week, where the subject of export credit subsidies will now have to be discussed.

The MTA case complicates the delicate and extremely important business of gaining an agreement to the arrangement compromise. Yet it is such an immediate and substantial example of the pitfalls of competitive export subsidization by governments that we feel we must approach it resolutely. We are pressing ahead with the steps required by law. We will be working to devise a solution which takes into account our international trade interests, our foreign policy interests, and this country's repeatedly expressed abhorrence of predatory financing practices. At the same time, we hope our trading partners will recognize this case as an illustration of the urgent need to approve the arrangement compromise.

We do not seek confrontation. It is in the interest of all parties to give up these wasteful subsidies. At a time when we are all struggling to reduce budget deficits and inflation, to have these practices is simply narrowly defined and shortsighted economic jingoism. It is imperative that we avoid the trade distortion and predatory trade practices exemplified by this case, since they lead nowhere but to mutually destructive competition. And it is surely in our common interest to mitigate trade frictions where we can, since the alternative is little gain but potentially great loss for all.

Mr. Chairman, the Reagan administration and the Carter administration before it have worked continuously on a bipartisan basis to find a new arrangement on export credit subsidies. This approach, while not perfect, if properly administered can minimize the export credit financing struggle in which we are currently engaged and which the MTA case typifies.

By June 15 there will be a multilateral decision—yes or no—on the current tabled proposal. If there is no agreement, the estimated $6 billion that was spent on export credit financing last year will surely balloon to the detriment of all exporting countries. And, unfortunately, I would see no other choice than for this Government to engage in a number of practices that we have been trying to eliminate. This would be necessary to protect American jobs and American companies.

If there is no agreement, the administration will have to reconsider its position on the so-called war chest bills of Senator Heinz and Congressman Neal. We will have to review the adequacy and type of funding for the Export-Import Bank. We may be facing continued applications of section 1912 of the Export-Import Bank to match subsidized sales into the United States, and we will vigorously assert our rights under the existing GATT rules.

The record should show that the United States does not want a trade war or an export credit war. We adhere to the principles of free trade; however, we have said repeatedly that this administration is a pragmatic not an idealistic one.

We have tried the high road of multilateral negotiations on export credits. We have watched our companies and workers disadvantaged by other nations. And we are now quickly losing our patience. The actions of other countries will determine our responses on export credits, but that response will be appropriate, I assure you.

We haven't started and we won't start a trade war; however, if one starts, I intend to see it won by American companies and for American workers. And I know the committee will support us in this effort.

Thank you, Mr. Chairman.

[The prepared statement of Hon. R. T. McNamar follows:]

FOR RELEASE UPON DELIVERY
EXPECTED AT 9:30 A.M. EST
FRIDAY, MAY 28, 1982

STATEMENT BY
R. T. McNAMAR
DEPUTY SECRETARY OF THE U.S. TREASURY
BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE

Good Morning, Mr. Chairman:

I very much appreciate the opportunity to address this Committee regarding the purchase of Canadian subway cars by the New York State Metropolitan Transit Authority, and the relationship of this case to the multinational negotiations on export credits. I will focus my attention on the export credit financing questions. Gary Horlick from the Commerce Department will discuss the countervailing duties aspect of the case, and Don deKieffer of USTR will discuss the GATT obligations involved.

While I am sure you are familiar with the facts as they have been published in the press, I might briefly review them here so that we have a common basis for discussion.

In early March the MTA announced its decision to purchase 325 subway cars -- the first installment under its modernization plans -- from Kawasaki Heavy Industries of Japan. The $274 million contract was backed by a loan from the Export-Import Bank of Japan to Kawasaki. The loan was denominated in yen in an amount equivalent to $126 million, with an interest rate of 9 percent and a term of five years. Kawasaki -- a private firm -- then re-lent the money to the MTA in dollars, adding a surcharge of $40,400 per car to cover foreign exchange risk. With the surcharge, the effective dollar interest rate paid by the MTA was 12.25 percent.

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This was not a case of subsidized export financing in violation of international agreements. The market interest rate (the Japanese Long-Term Prime Rate) in the yen capital market was 8.6 percent at the time this offer was made. Further, at the time the Japanese made their final offer to MTA last November 6, the minimum rate they were required to charge under the International Arrangement on Export Credits was 8.75 percent. Consequently, with a 9 percent yen rate, the Japanese were well within the parameters of the Arrangement on Export Credits and were charging a market interest rate.

Several months later the French Government apparently supported a bid from a French group for an additional 825 cars. While we are in the process of confirming the details with the governments of Canada and France, the following appear to be the facts: In the mistaken belief that Kawasaki was still in the competition for 400 of these cars, French financing for 400 cars was offered in francs at a basic interest rate of 8.5 percent for five years. For the remaining 425 cars, the French offered an 11 percent rate of interest in conformity with the Arrangement on Export Credits. This blend of rates plus guarantee fees and exchange risk insurance fees resulted in a total effective interest rate of 9.7 percent for a dollar loan.

In response to the French bid, Canada indicated it was prepared to match the French interest rate of 9.7 percent. To exceed the French bid, the Canadians reportedly stretched the payment term out to at least 8.5 years. Subsequently, the French, in turn, matched that term. This type of bidding on credit terms is typical of what goes on in official export credit competition.

Mr. Chairman, the 9.7 percent interest rate ultimately offered was far below market rates in francs or dollars and was a derogation from the minimum Arrangement interest rate for sales to so-called Category I countries like the United States. Although not quoting a yen-denominated loan, the French asserted that they were simply matching the Japanese offer as permitted by the Arrangement.

On May 18, the MTA announced that it would award a contract for the second installment of 825 cars to the Canadian firm Bombardier of Montreal. The financing was reported by the press to include:

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-- total cover of $563 million, or 85 percent of the $663 million contract price;

-- interest at 9.7 percent in dollars;

-- terms of ten years, that is, the principal to be repaid in 20 equal semiannual installments beginning six months after delivery of the last car late in 1987. (This would essentially be a 15-year loan);

-- Bombardier reportedly has agreed to reimburse the MTA for any countervailing duties which it may be assessed.

We are in the process of confirming these details with the appropriate governments. What is apparent at this point is that this is a highly subsidized financing package extended by a foreign government. Using the average AAA bond rate in 1981 as a benchmark of average market rates, and a term of 15 years, the 9.7 percent rate involves a subsidy of about $230 million on a $563 million loan. I do not know how Canadian taxpayers look at this, but I would find it hard to justify such a subsidy out of the American taxpayers' pocket.

Under the International Arrangement on Export Credits the maximum term for officially supported trade finance to countries such as the United States is 8.5 years after acceptance of the goods. Since last November 16, the minimum interest rate has been 11 percent for terms of 2 to 5 years, and 11.25 percent for terms of 5 to 8.5 years. Thus, if confirmed, both the interest rate and the term of the Canadian offer would derogate from the Arrangement. And it of course is even farther below prevailing market interest rates.

I should say that the Canadians had notified us in early May that they were offering financing that would derogate from Arrangement guidelines. They did not provide details, but said their purpose was to match the French. The French, for their part, appear to have left the same offer on the table that they provided for the first purchase, when they were competing with the Japanese. But the Japanese are not presently competing. And in any case, bids for this second contract should be at post-November 16 rates. This is at least 11.25 percent, not 9.7 percent.

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On the evening of May 17 the Treasury Department received a telex from the Budd Company asking us to invoke Section 1912 of the Export-Import Bank Act. I have attached as Appendix A the text of Section 1912 to this testimony for the convenience of the Committee. Briefly, it requires the Secretary of the Treasury to take three steps. First, on receipt of information that financing is being offered from abroad on imports into the United States in contravention of international "standstills, minutes or practices" to which the United States has agreed, Treasury is to investigate the facts. Second, if they are as alleged, the Secretary is to urge the offering country to bring the terms and conditions of its financing into conformity with the relevant undertaking -- in this case, the Arrangement on Export Credits. And third, if a satisfactory response is not received, the Secretary is empowered under certain conditions to authorize Eximbank to match the foreign financing, and to notify the foreign government of this action.

Immediately on receipt of the Budd request, we asked the American Embassies in Paris and Ottawa to confirm the details of the French and Canadian offers. If the offers were not in conformity with minimum Arrangement guidelines, the Embassies were requested to urge the host governments to make them conform. Our Embassies have requested the confirmation.

To date, the response from Canada is that a financing offer derogating from the Arrangement has been suggested but not formally offered. The details cannot be released until the Board of Directors of the Canadian Export Development Corporation -- the equivalent of our Eximbank -- meets and approves the offer. We understand this is standard EDC policy.

From Paris, we have been informed that the financing was a derogation from Arrangement guidelines but that it was to match what they thought was a Japanese yen loan at 8.5 percent interest.

We are continuing our efforts to confirm the facts. If we do not receive satisfactory replies in sufficient time for us to take any necessary action before a binding contract actually is signed by the MTA, we will have to proceed on the basis of the best information we have.

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I find this situation both frustrating and ironic. We have been told that the Canadian bidder, Bombardier, intends to assemble the cars in Vermont and purchase other U.S. components so that the U.S. content will be approximately 40 percent. Moreover, Canada has been our staunchest ally in trying to eliminate official export credit subsidies. And here we are facing Canada over an export credit subsidy issue. This is pure folly.

Indeed, there is a further irony in this case if the Budd Corporation were to win the bid. The Budd Corporation is a wholly-owned U.S. subsidiary of the German Tyssen Steel Corporation. The Budd offer is being supported by export credits from newly developing industrial nations. Specifically, newspaper reports indicate that the Budd Corporation bid was to be supported by subsidized export credits from Portugal and Brazil for components of the subway cars to be produced in Portugal and Brazil and exported to the United States for final assembly by Budd and sale to the MTA.

This means that two nations who have often been recipients of development aid are in effect subsidizing the American purchase of industrial goods. Anyone who witnesses this type of a spectacle must appreciate the distortions that wasteful export credit competition imposes on world trade. Obviously, the United States Government feels that these types of subsidies should not be provided to so-called Category I countries such as the United States by Category II countries such as Portugal and Brazil. This is the type of practice those Category I countries who permit the use of subsidized export credits are causing. It is simply ludicrous for Portugal and Brazil to be subsidizing credits into the United States.

Returning to the status of Treasury's inquiry into the Canadian and French bids, we have been making, and will continue to make, urgent representations in both Paris and Ottawa urging the Canadian and French governments to revise their offer so as at least to conform with the Arrangement on Export Credits.

The bidding for both MTA subway contracts has taken place at a time when interest rates permitted under the International Arrangement on Export Credits were substantially below market rates. The first contract, awarded in March, was decided under minimum rates prevailing until last November 16. The current bidding is going on under rates which are higher than previously, but still allow considerable subsidization. The case at hand provides a perfect example of the undesirable consequences of competitive export credit subsidization:

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-- heavy budgetary drains on the exporting government;

-- reduction in the gains from trade to the exporting country;

-- loss of business, and jobs, by other exporters or by import-competing industries;

-- distortions in trade flows; and

-- increasing friction, in this instance between ourselves and some of our oldest friends and allies.

Mr. Chairman, we feel strongly that American companies and American workers can compete in the world market place on the basis of price, quality and service of their products. We find it disturbing that major contracts such as this, involving vital interests of American industry, workers, taxpayers and communities, may be decided by the use of predatory financing in distortion of competitive market forces.

Both of the foreign bidders involved are located in countries that are parties to the Arrangement. Neither country is required to derogate from Arrangement terms in order to be assured a fair chance to compete in the American market. By offering highly subsidized government financing not available domestically in the United States, Canada and France would be placing the American industry at an unfair competitive disadvantage.

As the Committee well knows, on May 7 we completed OECD negotiations aimed at mitigating these problems by reducing the degree of subsidy governments are permitted to offer under the International Arrangement. We were not able to achieve as much as we might have wished in these talks, since some of our European trading partners were unwilling to accept all the changes we put forward.

The Chairman of the meeting, therefore, proposed a compromise which -- by a combination of modest increases in interest rates and reclassification of borrowing countries -- would raise the weighted average interest rate which must be charged by governments in official export credits by about 1.4 percent.

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The resulting weighted average rate which would be charged by other export credit agencies then would be about 11.7 percent, compared to Eximbank's standard rate of 12 percent. I have attached as Appendix B a summary of the compromise proposal for the Committee's information.

While the compromise falls short of our initial objectives, we believe it represents sufficient progress and have indicated our acceptance. Almost all delegations did likewise. Unfornately, the European Community requested a postponement of the deadline for reply from May 25 until June 15.

The Administration had some misgivings about this postponement, Mr. Chairman, since we are not willing to reopen negotiations on what would be, from our point of view, an acceptable but certainly not a one-sided deal. We determined, however, that flexibility as to timing would be the wiser course, lest we risk losing a potential agreement altogether. Consequently, we notified the OECD Secretariat of our acquiescence in the postponement. The new deadline will be after the Versailles Economic Summit where the subject of export credit subsidies will now have to be discussed.

The MTA case complicates the delicate and extremely important business of gaining agreement to the Arrangement compromise. Yet it is such an immediate and substantial example of the pitfalls of competitive export subsidization by governments that we feel we must approach it resolutely. We are pressing ahead with the steps required by law. We will be working to devise a solution which takes into account our international trade interests, our foreign policy interests, and this country's repeatedly expressed abhorrence of predatory financing practices.

At the same time, we hope our trading partners will recognize this case as an illustration of the urgent need to approve the Arrangement compromise. We do not seek confrontation. It is in the interest of all parties to give up these wasteful subsidies. At a time when we all are struggling to reduce budget deficits and inflation, to have these practices is simply narrowly defined and short sighted economic jingoism.

It is imperative that we avoid the trade distortions and predatory trade practices exemplified by this case, since they lead nowhere but to mutually destructive competition. And it surely is in our common interest to mitigate trade frictions where we can, since the alternative is little gain but potentially great loss for all of us.

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Mr. Chairman, the Reagan Administration and the Carter Administration before it have worked continuously on a bipartisan basis to find a new arrangement on export credit subsidies. This approach, while not perfect, if properly administered can minimize the export credit financing struggle in which we are currently engaged, and which the MTA case typifies. By the 15th of June, there will be a multilateral decision -- "yes or no" -- on the current tabled proposal.

If there is no agreement, the estimated $6 billion that was spent on export credit financing last year will surely balloon to the detriment of all exporting countries. And, unfortunately, I would see no other choice than for this Government to engage in a number of practices that we have been trying to eliminate. This would be necessary to protect American jobs and American companies.

If there is no agreement, the Administration will have to reconsider its position on the so-called War Chest bills of Senator Heinz and Congressman Neal. We will have to review the adequacy and type of funding for the Export-Import Bank. We may be facing continued applications of Section 1912 of the Export-Import Bank Act to match subsidized sales into the United States. We will vigorously assert our rights under the existing GATT rules.

The record should show that the United States does not want a trade war or an export credit war. We adhere to the principles of free trade. However, we have said repeatedly that this Administration is a pragmatic -- not an idealistic -- one. We have tried the high road of multilateral negotiations on export credits. We have watched our companies and workers disadvantaged by other nations. And, we are now quickly losing our patience.

The actions of other countries will determine our responses on export credits. But that response will be appropriate, I assure you. We haven't started -- and we won't start a trade war. However, if one starts, I intend to see it won by American companies and for American workers. I know the committee will support us in this effort.

Thank you.

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APPENDIX A

12 U.S.C. 635 a-3. Meeting foreign competition in U.S.

SEC. 1912 (a) (1) Upon receipt of information that foreign sales to the United States are being offered involving foreign official export credits which exceed limits under existing standstills, minutes, or practices to which the United States and other major exporting countries have agreed, the Secretary of the Treasury shall immediately conduct an inquiry to determine whether "noncompetitive financing" is being offered.

(2) If the Secretary determines that such foreign "noncompetitive" financing is being offered, he shall request the immediate withdrawal of such financing by the foreign official export credit agency involved.

(3) If the offer is not withdrawn or if there is no immediate response to the withdrawal request, the Secretary of the Treasury shall notify the country offering such financing and all parties to the proposed transaction that the Eximbank may be authorized to provide competing United States sellers with financing to match that available through the foreign official export financing entity.

(b) The Secretary of the Treasury shall only issue such authorization to the Bank to provide guarantees, insurance and credits to competing United States sellers, if he determines that:

(1) the availability of foreign official noncompetitive financing is likely to be a determining factor in the sale, and

(2) the foreign noncompetitive financing has not been withdrawn on the date the Bank is authorized to provide competitve financing.

(c) Upon receipt of authorization by the Secretary of the Treasury, the Export-Import Bank may provide financing to match that offered by the foreign official export credit entity: Provided, however, That loans, guarantees and insurance provided under this authority shall conform to all provisions of the Export-Import Bank Act of 1945, as amended.

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APPENDIX B

SUMMARY OF CHAIRMAN'S PROPOSED REVISIONS
OF
EXPORT CREDIT ARRANGEMENT

(1) Reclassification

The country categories used to differentiate the minimum interest rates would be significantly overhauled in order to base the classification system on objective criteria and to graduate a number of countries into higher categories:

-- Relatively rich countries (Category I) would be defined as countries with per capita income above $4000 according to the 1979 figures in the IBRD Atlas. No exceptions permitted.

-- Relatively poor countries (Category III) would be defined as countries eligible for IBRD/IDA financing plus certain other countries with similar per capita income.

-- Intermediate countries (Category II) would be defined as the remaining countries.

The reclassification should take place immediately and be valid for rates and maturities.

(2) Matrix Rates

Matrix rates would be increased for Category I and Category II countries but remain unchanged for Category III countries. The proposed matrix, with the current consensus rates in parentheses, is summarized below.

OECD Proposed Rates

	2-5 Years	5-8.5 Years
Relatively Rich	12.25% (11.0%)*	12.50% (11.25%)*
Intermediate	11.00% (10.5%)*	11.60% (11.0%)*
Relatively Poor	10.00% (10.0%)*	10.00% (10.0%)*

*Current Consensus Rates.

(3) Declaration on No-Derogation Engagement

Participants agree not to derogate on terms and interest rates and not to extend mixed credits with a grant element of less than 20 percent.

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(4) Low Rate Countries

Export credits benefiting from official financing support extended in currencies of low rate countries, i.e., countries with commercial lending rates below matrix level, could be refinanced at a final blended rate below the matrix level provided this blended rate is at least 0.3 percentage points above the long-term domestic commercial lending rates of that currency.

(5) Access to Yen

Japan declares that yen financing will be open to Participants without discriminatin between Participants.

(6) Methods of Calculation of the Grant Element of Mixed Credits

A study on this subject should be undertaken.

(7) Prior Commitments

The validity of all prior commitments is limited to 6 months.

(8) Terms of Export Credits for Aircraft and Nuclear Power Plants

Negotiation on agreements for these two sectors will be started.

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The CHAIRMAN. Thank you, Mr. McNamar.

We have been joined by Senator Stafford, Senator Heinz, and Senator Riegle. If Senator Stafford does not have a time problem, we will go ahead and hear this panel.

Senator STAFFORD. I don't have any questions at this time, Mr. Chairman.

The CHAIRMAN. All right.

Mr. Horlick?

STATEMENT OF GARY N. HORLICK, DEPUTY ASSISTANT SECRETARY OF COMMERCE FOR IMPORT ADMINISTRATION, WASHINGTON, D.C.

Mr. HORLICK. Thank you, Mr. Chairman.

It is an honor to appear before this committee. I will summarize my prepared statement which I will submit in full for the record.

As you have just heard, this contract is part of a 5-year $7.9 billion capital improvement program by the MTA. One component of that is the purchase of 1,150 new subway cars. As you also heard, the first contract for 325 cars was let to Kawasaki. Subsequently, bids were sought for the remaining 825 cars.

The Bombardier proposal included a final negotiated price of $803,000 per car, with final delivery May 1987. Budd's final proposal for these 825 cars was $770,000 per car, with final delivery October 1986.

Approximately 15 percent of Bombardier's car price is New York State content, bringing it to a total of 44 percent U.S. content for the Bombardier cars. Our understanding is that the Budd cars are approximately 85 percent U.S. content.

As Mr. McNamar has noted, there is an ironic aspect in that the only attractive financing Budd was able to offer to MTA was on a small portion of its content which is from Brazil and Portugal. Consequently, on May 18 the MTA announced the acceptance of the Bombardier proposal subject to approval by the MTA Board, the New York State Public Authority's Control Board, and the Export Development Corp. of Canada.

The U.S. Embassy in Ottowa notified us yesterday that the Export Development Corp.'s Board had just met and took no action on the Bombardier proposal, and the next meeting of the Export Development Corp. Board will not be for another month.

Representatives of the Budd Co., have met informally with Commerce Department officials earlier this week to discuss the possible filing of the countervailing duty complaint based upon the export credit scheme which has just been outlined. The Budd Co. has indicated publicly that it will file very shortly a countervailing duty complaint based upon the proposed sale by Bombardier and the concomitant Canadian Government financing arrangements.

The Commerce Department has examined preferential export financing schemes in a number of past investigations and has found such programs to be a violation of our countervailing duty laws. While I cannot prejudge any specific case, the export credit terms involved here appear to have been offered by the French and Canadian Governments on behalf of Francorail and Bombardier, respec-

tively, at less than the rates normally available in those two countries.

One additional possibility has been brought to our attention. We understand that if a countervailing duty case is brought and successfully prosecuted to an order, the importer might be reimbursed for any countervailing duties levied upon the importation of these rail cars. If the Government of Canada should choose to reimburse countervailing duties, it is quite possible that the Department of Commerce would be forced to increase the countervailing duty by an equal sum.

On the other hand, if Bombardier is reimbursing the importer, we would probably have to consider that as a possible violation of the antidumping law.

In summary, the Department considers this alleged infringement of our countervailing duty law as one which would be particularly serious. I wish to make it clear that the Department of Commerce will act swiftly and effectively under the countervailing duty and antidumping legislation, including in the context of large tender offers like this one.

Our trade laws do not force a purchaser to "buy American"; that is not their intent. But they do guarantee to American industry what we call a level playing field. Purchasers should decide to buy subway cars or widgets, or anything else, on the basis of price, quality, service, or any of the normal commercial criteria, but not because one side has subsidized financing.

We are determined to exert our fullest efforts to insure that our laws are applied vigorously and that no circumvention of the congressional intent is permitted.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Horlick follows:

TESTIMONY OF GARY N. HORLICK
DEPUTY ASSISTANT SECRETARY OF COMMERCE FOR IMPORT ADMINISTRATION

BEFORE THE SENATE COMMITTEE ON FINANCE

MAY 28, 1982

In 1981, the New York State Legislature authorized the New York Metropolitan Transit Authority (MTA) to implement a five-year $7.9 billion capital improvement program. A key component of MTA's program is the acquisition of 1,150 new cars. Initially, the Authority solicited bids for 325 new cars and in July 1981 received bids from the Budd Company and Nissho Iwai American Corporation, a Japanese trading company representing Kawasaki Heavy Industries. This contract was awarded to Kawasaki. Subsequently, bids were sought for the remaining 825 cars. Because MTA relied upon non-Federal funds for this purchase the "buy American" requirement which requires more than 50% domestic content and final assembly in the U.S. is not applicable.

Three companies competed for this procurement: Budd Company, the sole American manufacturer of rail cars, Francorail of France, and Bombardier, a Canadian manufacturer. The Canadian government offered attractive 9.7% financing at below market rates. We understand that the French government offered financing at a rate of

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8.5 %. THE BOMBARDIER PROPOSAL INCLUDED A FINAL NEGOTIATED PRICE PER CAR OF $803,485 (A TOTAL CONTRACT VALUE OF OVER $662 MILLION) WITH FINAL DELIVERY MAY 1987. BUYER'S CREDIT WAS OFFERED FROM THE EXPORT DEVELOPMENT CORPORATION OF CANADA COVERING 85% OF THE TOTAL CONTRACT PRICE PLUS ESCALATION, FOR A TERM OF 15 YEARS. APPROXIMATELY 15% OF THE BOMBARDIER CAR PRICE WAS COMMITTED TO NEW YORK STATE CONTENT, BRINGING TOTAL U.S. CONTENT TO APPROXIMATELY 44%. THE BOMBARDIER CARS ARE PRODUCED UNDER A LICENSING ARRANGEMENT WITH KAWASAKI. BUDD'S FINAL PROPOSAL FOR THE 825 CAR PROCUREMENT WAS $770,768 PER CAR, WITH FINAL DELIVERY OCTOBER 1986. UNFORTUNATELY, AND PERHAPS IRONICALLY, BUDD COMPANY WAS NOT ABLE TO OFFER ATTRACTIVE FINANCING EXCEPT WITH RESPECT TO A VERY SMALL PORTION OF THE CONTENT OF ITS CARS WHICH IS OF BRAZILIAN AND PORTUGUESE ORIGIN. CONSEQUENTLY, ON MAY 18 THE MTA ANNOUNCED THE ACCEPTANCE OF THE BOMBARDIER PROPOSAL, SUBJECT TO THE APPROVAL OF THE MTA BOARD, THE NEW YORK STATE PUBLIC AUTHORITIES CONTROL BOARD AND THE EXPORT DEVELOPMENT CORPORATION OF CANADA.

REPRESENTATIVES OF THE BUDD COMPANY HAVE MET INFORMALLY WITH COMMERCE DEPARTMENT OFFICIALS EARLIER THIS WEEK TO DISCUSS THE POSSIBLE FILING OF A COUNTERVAILING DUTY COMPLAINT BASED UPON THE EXPORT CREDIT SCHEME I HAVE OUTLINED. THE BUDD COMPANY HAS INDICATED PUBLICLY THAT IT WILL FILE VERY SHORTLY A COUNTERVAILING DUTY COMPLAINT BASED UPON THE PROPOSED SALE BY BOMBARDIER AND CONCOMITANT CANADIAN GOVERNMENT FINANCING ARRANGEMENTS.

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THE DEPARTMENT HAS EXAMINED PREFERENTIAL EXPORT FINANCING SCHEMES IN A NUMBER OF PAST INVESTIGATIONS, SUCH AS SPANISH OLEORESINS, AND HAS FOUND SUCH PROGRAMS TO BE A VIOLATION OF OUR COUNTERVAILING DUTY LEGISLATION. WHILE I CANNOT PREJUDGE ANY SPECIFIC CASE, THE EXPORT CREDIT TERMS APPEAR TO HAVE BEEN OFFERED BY THE FRENCH AND CANADIAN GOVERNMENTS ON BEHALF OF FRANCORAIL AND BOMBARDIER, RESPECTIVELY, AT LESS THAN THE RATES NORMALLY AVAILABLE IN THOSE TWO COUNTRIES. THIS ACTION POSES SERIOUS ECONOMIC CONSEQUENCES IN LIGHT OF THE SIZE OF THIS SALE, THE FACT THAT THE U.S. INDUSTRY HAS BUT ONE REMAINING PRODUCER, AND THE FACT THAT THE PURCHASER HAS BENEFITTED FROM GOVERNMENT ASSISTANCE IN THE PAST AND UNDOUBTEDLY EXPECTS FURTHER ASSISTANCE FROM THE FEDERAL GOVERNMENT.

FINALLY, ONE ADDITIONAL POSSIBILITY HAS BEEN BROUGHT TO OUR ATTENTION. WE UNDERSTAND THAT IF A COUNTERVAILING DUTY CASE ON THIS MERCHANDISE IS SUCCESSFULLY PROSECUTED TO A CVD ORDER, THE IMPORTER OF THE MERCHANDISE MIGHT BE REIMBURSED FOR ANY COUNTERVAILING DUTIES LEVIED ON THE IMPORTATION OF THESE RAIL CARS. IF THE GOVERNMENT OF CANADA SHOULD CHOOSE TO REIMBURSE COUNTERVAILING DUTIES, IT IS POSSIBLE THAT THE DEPARTMENT OF COMMERCE WOULD BE REQUIRED TO INCREASE THE COUNTERVAILING DUTY BY AN EQUIVALENT SUM. ON THE OTHER HAND, SHOULD BOMBARDIER INTERVENE TO REIMBURSE THE IMPORTER, WE WOULD PROBABLY CONSIDER THE AMOUNT REIMBURSED A DIRECT SELLING EXPENSE TO BE ADDED TO BOMBARDIER'S COST OF PRODUCTION UNDER THE ANTIDUMPING LEGISLATION, AND WE WOULD ANTICIPATE MAKING APPROPRIATE

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INQUIRIES WHETHER A FURTHER INVESTIGATION UNDER THAT LEGISLATION MIGHT BE IN ORDER.

IN SUMMARY, THE DEPARTMENT CONSIDERS THE ALLEGED INFRINGEMENT OF OUR LAW AS ONE WHICH WOULD BE PARTICULARLY SERIOUS. I WISH TO MAKE IT CLEAR THAT THE DEPARTMENT WILL ACT SWIFTLY AND EFFECTIVELY UNDER THE COUNTERVAILING DUTY AND ANTIDUMPING LEGISLATION, INCLUDING IN THE CONTEXT OF LARGE TENDER OFFERS SUCH AS THIS ONE. WE ARE DETERMINED TO EXERT OUR FULLEST EFFORTS TO ENSURE THAT OUR LAWS ARE APPLIED VIGOROUSLY AND THAT NO CIRCUMVENTION OF THE CONGRESSIONAL INTENT IS PERMITTED.

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The CHAIRMAN. Mr. deKieffer?

STATEMENT OF DONALD E. deKIEFFER, GENERAL COUNSEL, OFFICE OF THE U.S. TRADE REPRESENTATIVE, WASHINGTON D.C.

Mr. DEKIEFFER. Thank you, Mr. Chairman.

Mr. Chairman, it is a pleasure to be back here again. I would like to just focus my comments today, Mr. Chairman, on one aspect of the factors that you mentioned and that has not been covered yet; in particular, the international obligations of the United States.

First, Mr. Chairman, I would like to assure the committee that the United States, in particular the Office of the U.S. Trade Representative, believes that we do have international obligations and that we are going to abide by those international obligations both in the GATT and in the Subsidies Code.

In the case of export credits, however, I would like to emphasize that the United States has no international obligations which would prevent it from taking action against subsidized export credits when such export credits are offered to promote the sale of goods in the United States and where an American industry is injured by such practices.

Mr. Chairman, in the Subsidies Code there are several references to export credit subsidies, particularly in article IX of the Subsidies Code which basically prohibits developed countries for nonprimary products. More specifically, there is a reference to the use of export credit subsidies in paragraph K of the Illustrative List of Subsidy Practices. I have included the text of the entire item K in my testimony, and I would hope that it will be included in the record, but I draw your attention particularly to the last phrase of the second paragraph of item K which is included in my testimony. It reads as follows:

> An export credit practice which is in conformity with these provisions [and these provisions, by the way, refer to the OECD arrangement on export credits], shall not be considered an export subsidy prohibited by this agreement.

Mr. Chairman, item K in general prohibits the use of export credit subsidies. The second paragraph is a slight modification of this. I would like to emphasize, however, that nothing in this modification suggests that, even if export credits are consistent with the OECD arrangement on export credits, that they are not to be regarded as export credit subsidies—merely that they are not code prohibited export subsidies. All export subsidies can be countervailed under U.S. law, consistent with U.S. international obligations.

To the extent that export subsidies are consistent with the OECD arrangement, however, they are not actionable under the dispute settlement mechanisms of the code. This is not to say they are not actionable in U.S. law. That is up to the Department of Commerce to determine.

The United States has retained the ability to countervail numerous subsidies not specifically delineated in the Illustrative List, such as domestic subsidies and other kinds of subsidies. The Illustrative List contained in the Subsidies Code is just that—it is illus-

trative of the types of duties that are countervailable. It is not, in our view, a definitive list of all countervailable subsidies. The fact that a particular subsidy is not actionable under the code in no way prevents United States action under our own statutes.

Further, the issue of countervailability of export credit subsidies consistent with the OECD consensus is not even present in the MTA situation. Both the French and the Canadian bids are in derogation of those countries' obligations under the OECD and the Subsidies Code. There can, therefore, be no question that the United States is perfectly within its international rights in taking action to prevent injury to the domestic industry caused by export credit subsidization.

In a similar vein, the rebate or remission of antidumping and countervailing duties by the exporting country to the importer is an issue of domestic law, not international law.

Mr. Horlick mentioned a moment ago that the administration will very carefully examine the effect of such rebates or remissions.

Mr. Chairman, I want to emphasize that there is no explicit prohibition under either the Subsidies Code, the GATT, and the Antidumping Code for the United States to impose an additional countervailing duty or dumping duty upon imports should the exporting country pay a rebate to the importer to offset the effects of the original countervailing duty. In short, a decision to block the nullification of U.S. law would also be fully consistent with our obligations under the GATT, the Antidumping Code, the Subsidies Code, and the OECD arrangements.

No final decision has been made by either Canada or the MTA with regard to this particular issue. We understand this matter is still under intense consideration in Canada, and Canada has requested urgent consultations of the United States next week. We hope that we will be able to come to some sort of resolution of this issue, as Mr. McNamar indicated, short of being forced to take action ourselves.

We believe that it is indeed unfortunate that Canada felt compelled to match a subsidized offer by the French; but frankly, Mr. Chairman, we would have very little alternative but to take appropriate remedial action if the Canadian offer as reported goes through and if damage to a domestic industry could be demonstrated.

I would again like to reemphasize Mr. McNamar's comment that the Canadian Government has consistently agreed with the United States concerning the necessity for greater discipline in the area of export credits subsidies, and we do find it ironic that they find themselves in this particular position.

In sum, Mr. Chairman, the United States has no legal obligations internationally which would bar effective action to prevent injury to the U.S. subway car industry, and we believe that effective remedial action can and should be taken as soon as possible to prevent the extension of export credits subsidies.

Thank you, Mr. Chairman.

[The prepared statement of Mr. deKieffer follows:]

STATEMENT OF DONALD E. deKIEFFER

GENERAL COUNSEL

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

BEFORE

THE

SENATE FINANCE COMMITTEE

MAY 28, 1982

It is my pleasure to appear before you again. The issue which the Committee is discussing today is extremely important. It transcends the question of the purchase of subway cars by the Metropolitan Transit Authority and touches upon some of our fundamental international obligations as well as the interpretation of the Subsidies Code and our own countervailing duty laws. With the Committee's permission, I will defer to the Commerce Department for interpretation of the application of U.S. laws. I would like to focus my comments exclusively upon the obligations of the United States vis a vis the GATT, the Subsidies Code, the Antidumping Code and the OECD.

Briefly stated, the United States has no international obligation which would prevent it from taking action against subsidized export credits when such subsidized export credits are offered to promote the sale of goods in the United States and where an American industry is injured by such practices.

The Trade Agreements Act of 1979 incorporated by reference many of our obligations under both the GATT and the Subsidies

Code and our law is consistent with our international obligations. It is the view of the Administration that nothing in the Subsidies Code prevents the United States from taking action against such fundamentally unfair trade practices as subsidized export credits into our market. Although there are several references in the Subsidies Code to export credits subsidies, the most direct prohibition of this practice is contained in the so-called Illustrative List of Export Subsidies under paragraph k. That paragraph provides in pertinent part:

> The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below that which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, insofar as they are used to secure a material advantage in the field of export credit terms.
>
> Provided, however, that if a signatory is a party to an international undertaking on official export credits to which at least 12 original signatories to this agreement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original signatories), or if in practice a signatory applies the interest rates provisions of the relevant undertaking, an export credit practice which in conformity with those provisions shall not be considered an export subsidy prohibited by this agreement.

The first paragraph of the above-cited provision generally prohibits the use of export credit subsidies in international trade. The second paragraph modifies this general prohibition. Nothing the modification suggests that even if export credits are consistent with the OECD Arrangement on Export Credits that they

are not to be regarded as export subsidies merely, that they are not code-prohibited export subsidies. All export subsidies can be countervailed under U.S. law. To the extent that export credit subsidies are consistent with the OECD Arrangement, however, they are not actionable under the Code itself. The United States has retained the ability to countervail numerous subsidies not explicitly delineated in the Illustrative List such as domestic subsidies, etc. The "Illustrative List" is just that: illustrative of the types of duties that are countervailable. It is not a definitive list of all countervailable subsidies. The fact that a particular subsidy is not actionable under the Code in no way prevents U.S. action under our own statutes.

Further, the issue of countervailability of export credit subsidies consistent with the OECD consensus is not even present in the MTA situation. Both the French and Canadian bids are in derogation of those countries obligations under the OECD and the Subsidies Code. There can therefore be no question that the United States is perfectly within its international rights in taking action to prevent injury to the domestic industry caused by export credit subsidization.

Similarly, the rebate or remission of antidumping and countervailing duties by the exporting country to the importer is an issue of domestic, not international law. There is no explicit prohibition in either the Subsidies Code or the Antidumping Code for the United States to impose an additional countervailing duty or dumping duty upon imports should the exporting country pay a rebate to the importer to offset the effects of the original

countervailing duty. In short, a decision to block the nullification of U.S. law would also be fully consistent with our obligations under the GATT, the Antidumping Code, the Subsidies Code and the OECD Arrangement.

No final decision has been made by either Canada or the MTA with regard to the subway car offer. We understand that this matter is being discussed in Canada and we hope to consult with Canadian authorities next week.

While it is indeed unfortunate that Canada felt compelled to match a subsidized offer by the French, we would have little alternative but to take appropriate remedial action the Canadian offer as reported goes through and if damage to a domestic industry could be demonstrated. I should note that the Canadian government has consistently agreed with the United States concerning the necessity for greater discipline in the area of export credit subsidies and concurs with our analysis regarding the countervailability of such subsidies. All this makes their action doubly ironic although understandable when faced with what amounts to predatory competition offered by the Europeans.

In sum, the United States has no international legal obligations which would bar effective unilateral action to prevent injury to the U.S. subway car industry and we believe effective remedial action should be taken as soon as possible to prevent the extension of subsidies export credits.

I should emphasize that the United States, in taking any remedial action, is fully cognizant of its own obligations under the GATT and the Code and will abide by those obligations.

The CHAIRMAN. Let me first yield to the Senator from New York, Senator Moynihan.

Senator MOYNIHAN. Mr. Chairman, the testimony has been straightforward, and we particularly appreciate that of Secretary McNamar, who is always forthcoming with this committee.

I would ask one question not touched on which concerns section 1912 of the Export-Import Bank legislation which since 1978 has provided that the U.S. Government, or specifically the Eximbank, can match a subsidy. I believe it is the case that this section has never been used, is that not so?

Mr. MCNAMAR. That is my understanding also, Mr. Chairman. Yes.

Senator MOYNIHAN. The United States has never done this.

And to the general question of the recapitalization of our country, Mr. deKieffer spoke about the protection of an American industry here. Is it not the case that there is, in effect, one company in the United States that produces railroad cars of this kind?

Mr. DEKIEFFER. No, there is one left, Mr. Chairman.

Senator MOYNIHAN. There is one left, and it is owned in Germany and does its producing in Portugal and Brazil?

Mr. DEKIEFFER. Mr. Chairman, when we talk about the industry here, we are not just talking about one company effectively. It is very much like many industries.

Senator MOYNIHAN. But this one company takes bids. And, as a matter of fact, the MTA has a contract with it. And its books are full.

Mr. DEKIEFFER. Our understanding, Mr. Chairman, is they were the low bidders in this particular incident.

Senator MOYNIHAN. The books are full, aren't they?

Mr. DEKIEFFER. Mr. Chairman, frankly, as Mr. McNamar and Mr. Horlick mentioned a moment ago, the issue here is not whether the Budd Co. or some other company gets the final offer; the question is whether or not the rules of competition are fair.

Senator MOYNIHAN. Well, I know that, Mr. deKieffer. There is a larger issue. The issue is whether we are going to reindustrialize this Nation or not. I was not asking you in an adversarial way. I was saying to you that the one company that makes cars in this country is owned abroad; that MTA has already contracted with it; and its books are full. Now how did the United States get to the point where there is only one company in the whole country that can make a subway car? That's a question which we all deal with in this committee and that you deal with.

Senator HEINZ. We had a lot of help from the Carter administration in failing to enforce our laws, is the answer to that question.

Senator MOYNIHAN. I see. This all began in 1977?

Senator HEINZ. A lot. It all began to fall apart in 1977. During the period 1977 to 1980 we lost two of the remaining light rail vehicle manufacturers, and we ended up at the end of 1980 only with the Budd Co., which—and the Senator from New York is correct—was acquired by a German conglomerate. Because there had been a total absence of any enforcement of our laws against unfair foreign competition, we did not have any way of dealing with the French who subsidized; and, indeed, Mr. McNamar and others are trying to negotiate in the arrangement and get away from the subsidized

export credit competition that the French and others have been so actively involved in.

But I would agree with the Senator from New York that the question is what do we do about it from here on out. It is something that has happened.

Senator MOYNIHAN. I believe I have the floor. May I just say I hope you also agree?

Senator HEINZ. I thank the Senator for yielding. [Laughter.]

Senator MOYNIHAN. I trust the Senator also agrees that we will most effectively do something about this by not making invidious comparisons about what the Eisenhower administration did as against the Truman administration.

Senator HEINZ. I know the Senator would never himself make an invidious comparison involving the Reagan administration on anything.

Senator MOYNIHAN. I have not done this morning.

Senator HEINZ. Not this morning. [Laughter.]

Senator MOYNIHAN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

I think this is an informal hearing. [Laughter.]

We seldom engage in any partisan activity. [Laughter.]

And on the basis that it is an information hearing, I would be very happy if Congressman Rangel had questions—or Congressman Martin. Do you have any questions, Charlie?

Mr. RANGEL. No thank you, Mr. Chairman.

The CHAIRMAN. Congressman Martin?

Mr. MARTIN. Just one brief question for whoever wants to answer it. I guess it speaks to what Senator Moynihan was talking about.

Is the Bombardier Corp. from your point of view a foreign corporation as opposed to the Budd Corp., which is looked to as domestic? Or did I misunderstand that? Or does anybody really care in this instance?

We are not looking to this particular contract here in these hearings, we are just looking for the general overall policy of the United States, of course; but how do you view them?

Mr. HORLICK. The problem is not that Budd is foreign owned or that Bombardier is located in Canada. The problem is that Bombardier, in bidding for this, had the help of a foreign government. It had access to a foreign government treasury.

Budd, in bidding for this, did not have access to a foreign government treasury. That is not fair.

Mr. MARTIN. What was this Portugal situation here? Doesn't that relate to a foreign treasury?

Mr. HORLICK. Oh, yes, it does. As I mentioned, we find it ironic that Budd, in order to offer any kind of attractive financing, had to source components in countries that offered this kind of subsidy. The net result is that Budd's vehicle is about 85 percent U.S. content and 15 percent foreign content—Brazil and Portugal.

Bombardier's is 44 percent U.S. content; but they had to have 50 percent Canadian content to have access to the Canadian treasury.

Mr. MARTIN. I see. But the extent to which we are concerned about it—and we are just tangentially concerned with this contract here at this hearing—it makes no difference whether or not they

are foreign or domestic. I say that because, as I pointed out before, as far as component parts are concerned a significant portion of that is in my Congressional District; but 150 miles from the point of where those, in this case, brakes are made we also have Bombardier Corp., and they are making substantial investments right in another portion of my district.

Thank you very much.

The CHAIRMAN. Yes, I would underscore what his point is. This is maybe focusing on a particular case, but it is really on a larger problem.

I mentioned—not parochially, I guess—that we are having a little problem with the Brazilians with reference to aircraft that are made in Kansas. So I would hope that we are not here to decide this case; we are here to explore what Senator Heinz had a long interest in and Senator Moynihan.

Don, do you have any questions?

Senator RIEGLE. I would like to make a comment.

The CHAIRMAN. Sure. Just let Pat first have one short question.

Senator MOYNIHAN. Just one short question for Mr. Horlick, who was formerly a member of this staff and is wellknown to this committee.

Do you in the Import Administration in the Department of Commerce have any present intention to self-initiate, a word now used, to begin on your own a subsidy proposal for this industry?

Mr. HORLICK. As the committee knows, the normal process is for a petition to be filed by a private entity. The Congress wanted to make sure that all American industries including workers had access to these laws and thus provided a provision for the Department to self-initiate. I think that provision is much misunderstood. Whether we self-initiate or a private entity files a petition, that private entity within 45 days has to show the International Trade Commission that it is injured.

If I went over to the ITC and said the widget industry is bleeding but they didn't bother to show up, I wouldn't expect to win my case. So, I don't think the distinction is that great. The suggestion has been made, but as I said, the Budd Co. has indicated an intention to file a countervailing duty petition, and we have offered them our assistance in showing them how it is done. They have perfectly competent counsel.

Senator MOYNIHAN. But, sir, I am referring to a subsidy case.

Mr. HORLICK. We would handle a countervailing duty petition. Mr. deKieffer's office would handle the international actions against subsidies. I am not sure I am being clear.

Senator MOYNIHAN. Well, could I ask either of you—does the administration plan to offer a subsidy to counter the Canadian subsidy?

Mr. HORLICK. My apologies. Since Treasury has the money, I will let them answer it. [Laughter.]

Senator MOYNIHAN. If the Canadian offer does violate the OECD guidelines, could the United States institute a case under section 301 of the Trade Act of 1974 and proceed under the fast track of the Subsidies Code? And not only could you, but do you intend, since I think you have testified that it does violate. Mr. deKieffer?

Mr. DEKIEFFER. Yes, Senator, there certainly is no bar for us moving forward. And, as I mentioned in my testimony, we regard the current Canadian offer to be not only a violation of the OECD arrangement, but a straight flat violation of their undertakings in the Subsidies Code as well.

Senator MOYNIHAN. Yes.

Mr. DEKIEFFER. Certainly the option of section 301 is under very active consideration. Several private sector groups have already discussed it with us. We are currently considering all of our options, and that is one of the options that is under consideration.

Senator MOYNIHAN. Thank you very much.

The CHAIRMAN. Senator Riegle?

Senator RIEGLE. Thank you, Mr. Chairman.

Not being a member of this committee, I especially appreciate your allowing me to sit in for a period of time.

Senator Heinz and I are both members of the Senate Banking Committee where I served as the ranking minority member on that committee, and we do have authority and responsibility for overseeing the Eximbank. And I am particularly concerned about following through on the question of whether section 1912 ought to be brought to bear here. And I wouldn't call that a subsidy as such; it seems to me that it is an attempt to try to achieve some fair rules of competition.

I just want to say that I am very concerned about this case. I think it does indeed illustrate a basic structural problem in our economy; but this is about as clear cut a specific case as I have seen, and I think it is important that we move on it; I think it is important that the administration move on it, and that we in the Congress likewise move on it.

From our vantage point on the Banking Committee, I will be prepared to be of help in trying to sort this matter out. But I think it would be unfortunate in the extreme if we were to look the other way and find ourselves further disadvantaged in a major trade transaction of this kind that only can end up hurting the country, I think—hurting the workers of this country.

So I appreciate your courtesy in allowing me to take part.

The CHAIRMAN. Thank you very much, Senator Riegle. I am pleased to have you.

Senator Heinz?

Senator HEINZ. Yes, Mr. Chairman. I have a few brief remarks as an opening statement, plus a couple of questions, if I may.

The CHAIRMAN. All right.

Senator HEINZ. As opening comments, I would agree with Senator Dole that there are two issues here. One is whether safe harbor leasing, apart from whether we like it or not, was ever intended to be used to enrich foreign based corporations, companies which were performing the majority of their work and receiving the majority of American dollars abroad.

Our accelerated depreciation rules don't apply when an American company builds a facility in France or in Canada. Why, therefore, should safe harbor leasing be used in a way that allows foreign competition to come into the United States and build most of what they want to build in France or a substantial amount of what

they want to build in Canada? That is a policy issue, and it's one I think the American people should have a great deal of interest in.

The second issue is the trade issue. I know that we have to get a series of agreements and a series of actions, unilateral if necessary, to get our foreign competitors to play by the rules.

Now, in the case of both the French and the Canadian offers here, I think we all know that—and it is particularly true of Canada's offer—it is a prima facie case of going below the arrangement. Is that not correct, Mr. McNamar?

Mr. MCNAMAR. Based on what we know to date, absolutely.

Senator HEINZ. And it is a total abregation, therefore, of an agreement that the Canadians have made with us. It is a clear subsidy; it is if there is injury countervailable And it is also subject to the provisions of section 1912, would it not be?

Mr. MCNAMAR. Exactly, what we are doing at the present time is proceeding through the steps outlined in section 1912 of the Export-Import Bank, and we are in that process.

Senator HEINZ. I am the author of section 1912. The reason we put it into the act, the Export-Import Authorization a few years ago, was to discourage the Canadians, the French, or anybody else from doing what they are doing today, which is to come into our markets with a subsidized export credit package and take American jobs out of America. We didn't want to be defenseless, and so I put the provision into the Export-Import Bank bill to permit the Eximbank to meet in the case of a subsidized export credit offer such as is involved here this kind of unfair foreign competition.

I am delighted to hear you are going through the steps, but let me also add that the intent of the law is clear, the wording of the law is clear, and that unless you actually find a factual basis for not applying the law such as the fact that whoever is involved is not below the arrangement I see no alternative but for you to apply, and for the Eximbank to follow through, to protect American jobs and American business.

Do you have any comment on that?

Mr. MCNAMAR. Well, there are a number of provisions in American law that we have in our arsenal. If you will, unilateral weapons, as you would describe them. The United States has acted very responsibly, I think, and I think we have restrained our economic power to date just as the United States militarily restrains its military power. That is the responsibility of the leader of the free world militarily; it is the responsibility of the leader of the free world economically.

But as I said in my testimony, we are losing our patience. And if we are unable to conclude the arrangement, then I think we have to reconsider to what degree of restraint we want to impose ourselves in the face of these practices by other countries.

I think it is very safe to say that as the negotiations have proceeded over the last year you have seen a stiffening of attitude within this administration. We have tried to convey that repeatedly to our trading partners; we have tried to convey that to the finance ministries; we have conveyed that at the Ottawa Economic Summit and it will be conveyed again at Versailles next week.

So, I think, Senator, what you are finding is a recognition that if we cannot do this multilaterally, perhaps the United States is

going to have to meet the practices of other countries, as abhorrent as we think they are.

Senator HEINZ. Mr. McNamar, more specifically, let's assume that you do find from your procedures that the offer involved here, the Canadian offer, in fact is below the arrangement, that it is a prima facie subsidy, that obviously the conditions of section 1912 are met. Is the administration, for whom you are here today and for whom you speak, are you prepared to press the Eximbank to follow through for their part?

Mr. MCNAMAR. Well, let me talk about section 1912.

Senator HEINZ. A simple yes or no.

Mr. MCNAMAR. Sometimes equity and simplicity are mortal enemies, and I suggest that equity and propriety entitles you to a more complete answer than that.

Senator HEINZ. Well, I was just trying to save your time.

Mr. MCNAMAR. Thank you. [Laughter.]

If you look at section 1912, it has two different authorizations. One, some mandatory things that the Secretary of the Treasury must do, and one are some things that he may do. That is, there are some mandatory requirements, and there are some requirements that are permissive.

In terms of what we must do, we must conduct an inquiry as to whether there have been noncompetitive financings. We have initiated that. Then we have to determine whether the noncompetitive financing that has been offered will be withdrawn by the countries. We are in the process of determining that. It would be unclear as to whether they have or haven't, for example, until the Canadian Export Development Board meets. If the offer is not withdrawn from Canada or from France and there is no immediate response to the withdrawal request, we have to officially notify the countries involved that the Eximbank may be authorized to provide matching financing. That is the formal diplomatic requirement that we give them notice that we can use our Eximbank in an effort to match. Those are the required parts of section 1912.

The permissive parts indicate that the Secretary may authorize the Eximbank to provide matching funds, assuming that he determines a priori that the availability of foreign official noncompetitive financing is likely to be a determining factor in the sale. He must make that finding. In other words, in this instance we have to find that Budd would have gotten the contract but for this financing. We don't have enough facts yet to make that determination, and this hearing today has been helpful.

If the Secretary made that determination, and if the foreign noncompetitive financing has been withdrawn on the date that is appropriate, then the Bank can be authorized to provide it. Then the Eximbank has to make an independent determination on its own.

Senator HEINZ. You are assuming that the Eximbank is independent of the administration—something that I know you don't believe; neither does Dave Stockman.

I remember what is in here; I have tracked you all the way. Now, would the administration press the Eximbank if all the findings were made? There is a money problem with the Eximbank. That is why I ask.

Mr. MCNAMAR. There may not be as much of a money problem as it first appears at the Eximbank if we have to do this. There would be some considerations as to how the financing might be provided, and I have been working with the General Counsel's Office at the Treasury Department to try to interpret section 1912 and the rest of the Eximbank to see what is the maximum leverage we can exert.

If we were to utilize section 1912, it would clearly be in effect a shot across the bow to indicate that we were fed up. We have not. That is something we would do reluctantly. But if we did do it, we intend to do it in a way that will provide the maximum leverage on the other countries. Therefore, we are exploring the legislative history in 1912, and other interpretations of the Eximbank statute, to see what is the most cost-effective way that we can do it.

Senator HEINZ. I hope you will consult with the author of the section as you explore the legislative intent.

Mr. MCNAMAR. I will give you that promise.

Senator HEINZ. Thank you.

The CHAIRMAN. Do you have a question, Congressman Martin?

Mr. MARTIN. Yes, very briefly, just to follow up on what you said about this test that you concern yourself with. Again, we are talking generalities, not to a specific case, I know—in this instance do you take into consideration the appropriate testimony that the Budd Corp. was to be supported by subsidized export credits from Portugal and Brazil? Do you take that into consideration? That that activity as well might not meet the standards we would all like to meet?

Mr. MCNAMAR. The key thing is that we would have to make a finding that if it weren't for the financing advantage provided by a foreign government, Budd would have gotten the contract.

My understanding from the published facts and the information we have at Treasury so far is that in fact Budd did make the low bid per car without the financing—in other words, before you figure out how they are going to be financed.

Mr. MARTIN. Sir, if I may interrupt, keeping in mind that on their bid also included the Brazil/Portugal connection as well. Is that taken into consideration?

Mr. MCNAMAR. I think it will have to be taken into consideration. How much it weighs, and what the exact facts of that are, quite frankly we don't know at this point.

Mr. MARTIN. But that would be taken into consideration. You would have to find that out.

Mr. MCNAMAR. We have to find out more facts than we have today, and that's what we are in the process of. Yes.

The other thing I would point out is that my understanding, unlike Senator Moynihan's, is that in fact the Budd Corp. also provided the earliest delivery date to MTA in terms of completion of the contract. So my understanding, based on the facts we know at this point—and I hasten to keep saying that because I'm not sure we have the facts fully in hand—is that Budd was the lowest cost offerer per unit, that Budd has built these types of stainless steel cars before, therefore they meet all the technical requirements for a steel-wheeled stainless steel subway car, and would have provided the earliest delivery date.

Senator MOYNIHAN. Would the gentleman yield?

Mr. MARTIN. Certainly.

Senator MOYNIHAN. I would just like to make the point that Mr. Ravitch, the chairman of the MTA, is present. I think it would be very useful for us to address this question to him.

Mr. MCNAMAR. Yes. He obviously has far more facts than I do on this.

The CHAIRMAN. Will this be a matter to be discussed at the Versailles meeting?

Mr. MCNAMAR. Yes; it will.

The CHAIRMAN. Is it a matter of high priority with the administration?

Mr. MCNAMAR. Yes; it is.

The CHAIRMAN. Has the OECD standstill agreement on financing any remaining validity in view of this repudiation of it by France and Canada? Or will that be a matter the President may be discussing?

Mr. MCNAMAR. Well, if I might rephrase your question, it is a derogation as opposed to repudiation. In other words, they have not repudiated the entire agreement. There are accepted procedures for derogating or going outside the normal agreed-upon terms of the agreement.

I think what this particular case has done, because of its visibility in the American press, has been to provide an example of why we have been trying to obtain an agreement that would move these interest rates and terms to market conditions to eliminate this practice.

The CHAIRMAN. Maybe if we would get our own interest rates down they wouldn't have this problem.

Mr. MCNAMAR. We are working the other side of the problem.

The CHAIRMAN. Slow.

Mr. MCNAMAR. It's slow on both sides. I agree.

The CHAIRMAN. Right.

I don't want to cut anybody off from questions. I understand Senator Stafford is under some time constraints.

I am wondering, would it be possible for this panel—do you have any other place to go? [Laughter.]

Maybe it would be better if you would stick around a while, if you could accommodate us.

Mr. MCNAMAR. Of course I can.

The CHAIRMAN. You can? Well, stay anyway. [Laughter.]

Mr. MCNAMAR. The Chairman and I always understand these subtle nuances. [Laughter.]

The CHAIRMAN. The only reason I say that is there may be additional information that would be very important to your Department. Plus, if you were here, if there was a question, we wouldn't have to wait for you to come back.

Well, I thank the panel very much.

I would now like to change the hearing schedule a bit to accommodate Congressman Jeffords and Senator Stafford, and I think Congressman Martin also.

Mr. MCNAMAR. Thank you.

The CHAIRMAN. Senator Stafford?

STATEMENT OF HON. ROBERT T. STAFFORD, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator STAFFORD. Mr. Chairman, I appreciate this opportunity to appear in front of your committee this morning. I am speaking for my colleague in the Senate, Senator Leahy, as well as for myself, since he is unavoidably elsewhere and cannot be with us.

Listening to this legalistic matter apparently between Germany, France, Canada, and the United States, I am afraid that there is one issue that might be lost in this discussion; that is that the subway cars for New York City will be assembled in Barre Town, Vt. Of course, I have no particular parochial interest in that.

I do want the committee to know, and the administration to know, that this community, Barre, Vt., which is this very small town, has invested a substantial and considerable stake in bringing the first Bombardier branch plant into the United States. And the community stands to gain more than 200 jobs over 5 years if Bombardier has this subway contract. This infusion of jobs and money is sorely needed in the central part of Vermont.

I am personally convinced that the New York City Mass Transit Authority does not want to break any law and that Bombardier Corp. does not intend to break any law. My concern is that intimidation might be used to prevent this contract from being awarded through normal channels. If there are problems with this contract, as has been outlined here, a process exists for handling them.

Central Vermont, and my State, generally, look with eager anticipation to the benefits that the MTA contract promises.

And I would like now, Mr. Chairman, to introduce Vermont's secretary of development and community affairs, Arthur J. Kreizel, accompanied by Mr. Bert Adell, who will discuss the implications of the contract for Vermont.

The CHAIRMAN. Thank you very much, Senator Stafford. And I do want the record to indicate that I did discuss this matter with Senator Leahy who, as you indicated, could not be here this morning, and that he may wish to file a statement. The record will be open.

We are very pleased then to hear from Mr. Kreizel.

STATEMENT OF ARTHUR J. KREIZEL, SECRETARY OF DEVELOPMENT AND COMMUNITY AFFAIRS, STATE OF VERMONT

Mr. KREIZEL. Thank you for letting us appear before this committee.

Some 5 years ago central Vermont and other areas of Vermont were faced with a sluggish economy and declining employment. They came to grips with this problem. And in the case of central Vermont, 2 years ago they had an opportunity to bring Bombardier, a Canadian manufacturer of railroad cars, into the area.

The local citizens raised $200,000 in 10 days. The State purchased a railroad that was being abandoned. The Vermont Industrial Board loaned money at low interest rates to assist in building a factory. Various State agencies contributed services and money. The State committed almost a quarter of a million dollars for training. Now I know in relationship to a $790 billion budget, that is not a

lot of money, but it is equivalent to almost a dollar a household in Vermont.

These efforts resulted in a classic case of local and State cooperation developing a healthy economic policy.

To the people of Vermont, Bombardier is a U.S. company, Bombardier is a U.S. factory. We estimate that this contract of MTA will produce substantially in excess of a million hours of employment to the people of Vermont.

These are difficult times for Vermont and the rest of the United States. It just so happens that Bombardier is in Vermont. And to deprive us of additional employment at good wages seems onerous.

I respectfully submit that Bombardier came into the United States with good intentions and intentions of expanding which they are doing, and they have carried these intentions out.

Our State, and particularly the people of central Vermont, have put in a huge effort to bring this about. And it just seems unfair that when these efforts are coming to fruition that roadblocks are being put in our way.

Thank you very much.

And this is Mr. Bert Adell, who is the director of the Economic Development Corp. of central Vermont, who has spent a lot of effort in getting this fine company into Vermont. So if you have any questions for us we will be happy to answer them.

The CHAIRMAN. Mr. Adell, do you have any statement you would like to make part of the record?

STATEMENT OF BERT ADELL, DIRECTOR OF THE ECONOMIC DEVELOPMENT CORP. OF CENTRAL VERMONT

Mr. ADELL. No, Mr. Chairman, I don't. However, I thought I would be here to add the local touch to our project which holds great hope for our region, the small area of 30,000 people in the labor force.

You have been talking about the foreign companies. The fact is that we have a U.S. company now making railroad cars in the United States. Bombardier started manufacturing cars for the New Jersey Transit Authority 6 months ago.

The transfer of technology will take time. The company intends to expand the labor force and build these cars for MTA in Barre. It would mean at least 200 new jobs for us and that is a significant impact on our economy and we need it. Thank you.

The CHAIRMAN. We appreciate that very much. And there may be questions. We are under some time constraints and I certainly want to recognize Congressman Jeffords who I know has a deep interest in this matter also.

Congressman Jeffords?

STATEMENT OF HON. JAMES M. JEFFORDS, A U.S. CONGRESSMAN FROM THE STATE OF VERMONT

Mr. JEFFORDS. Thank you, Mr. Chairman. First, I have a more lengthy statement which I would like to make part of the record.

The CHAIRMAN. It will be included in the record.

[The statement follows:]

TESTIMONY OF CONGRESSMAN JAMES M. JEFFORDS

BEFORE THE SENATE FINANCE COMMITTEE

MAY 28, 1982

Mr. Chairman:

I appreciate being given the time to address the Committee this morning. I am also pleased to be in the company of the rest of the Vermont Congressional delegation, and the gentleman representing the State of Vermont.

Mr. Chairman, Members of the Committee, the subway car agreement between MTA of New York City and Bombardier has raised many complicated questions involving international trade. I will leave it to the U.S. Import Administration to determine if the deal's financing package complies with Title 7 of the Trade Agreements Act of 1979. The experts will have to assess the propriety of countervailing duties. And I will defer to the Treasury Department in the matter of matching financing for Budd from the Export Import Bank.

However, these determinations aside, I think we have to be very careful to avoid looking at this case as a black and white issue. To see the MTA/Bombardier agreement as one which is somehow anti-American and bad for U.S. jobs would be extremely inaccurate and unfortunate. Under the negotiated plan, 40% of

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the content of the 825 subway cars involved will be produced in the U.S.. 16%, I understand gears and other equipment, will be purchased in the State of New York. And, of course most important from my perspective, the finally assembly of the cars will take place at Bombardier's new facility in Barre, Vermont. Final assembly usually accounts for roughly 10% of the value of a subway car.

I cannot emphasize how important Bombardier's decision to locate in Vermont was and is to the State. Arthur Kreizel, Vermont's Secretary of Development and Community Affairs, will elaborate on this point. To date, it has meant 160 jobs in the Barre/Montpelier area, jobs commanding beginning salaries considerably in excess of the area average. The agreement with MTA involves $1 million in man hours of work. It means an increase in the Barre plant workforce of between 150 and 200 jobs and plant expansion.

The State has a large stake in this plant in terms of its boost to the State economy in a time of recession and high unemployment. As you know, Vermont has one of the lowest per capita income levels in the country. The State also has some $227,000 in training money invested in the project.

An examination of Bombardier's track record in this country is

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also revealing. When the company decided to build in Barre, it made a commitment to develop a full-fledged facility. Moreover, Bombardier was sourcing in the U.S. long before our Buy American provisions were put in place. When it supplied Chicago with cars 4 or 5 years ago, it built them with 78% U.S. components. Bombardier is sourcing in the U.S. for components and vehicles being made in Canada for Canadian use only, which it is not obliged to do. In general, Bombardier has operated on the theory that if it is going to sell in the U.S. market, it must become a part of that market. I think that approach is a very healthy one for this country.

I also think it is important to note that the Budd Company is an American division of Thyssen Corporation of West Germany. If Budd had been awarded the MTA contract for 825 cars, it was planning to have car shell and propulsion work done abroad. Morever, Budd's Red Lion plant in Philadelphia is, I'm told, presently filled to capacity. I wonder how Budd could have fullfilled the contract with MTA for the cars without having substantial work done overseas.

Finally, Mr. Chairman, I think we want to be sure we don't blame Bombardier for certain situations which have been created in this country by our own government, the Congress. Many may wish that the U.S. subsidized more of its exports, and at more favorable terms. Indeed, at 6% we have a very low level of export subsidization compared to the United Kingdom (35%), Japan (35%),

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France (20%) and Germany (12%). While the governments of our allies have given a very high priority to exports and their involvement in that process, our government has not. This has been a conscious decision. It may have hurt some of our companies in terms of being competitive abroad, but to the extent it does, we have to accept responsibility ourselves for the results.

Other parties may feel that the Export Import Bank should be providing domestic financing. But again, although the Congress opened the door to this possibility in 1978, this was principally saber rattling and we have not moved in this direction to date.

In addition, although it may be tempting to see this agreement as another example of foreign competition unjustifiably doing serious injury to a U.S. concern, U.S. companies in the mass transit field have suffered primarily from an inability to make the necessary capital investments, the lack of standard specifications, the losses sustained on fixed-price contracts as inflation soared, and the expenses incurred complying with regulations.

Finally, Mr. Chairman, I know you are interested in the MTA/Bombardier deal from the perspective of safe harbor leasing. In the main, I think this is a tangential issue to the merits of the agreement. I happen to agree with you that this section of last year's tax bill is badly flawed. Some very profitable U.S. companies, as a result of this new law, are

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getting net tax refunds from the federal government. Companies like Occidental Petroleum, who derive their profits from foreign income, are benefiting handsomely from tax credit leasing. In fact, the oil industry has been the largest buyer of tax breaks under this system, as you well know, and according to the Joint Committee on Taxation, the program has been only 76% efficient, with excessive profits accrueing to middlemen. On the other hand, if any group deserves this sort of tax break, it is the transit authorities in the country; they are hard pressed for financial resources, and face new federal funding cutbacks, and yet their purpose is an indispensible, energy efficient service to the public.

In any event, Mr. Chairman, we can expect an effort to sell tax credits in this case whether Budd or Bombardier builds the cars.

I understand there is talk of writing Buy American provisions into the tax credit leasing law. I don't think this step would solve the fundamental problems with the law in any way, and in fact I think it would only make things worse. Mr. Chairman, as noted earlier, we already have Buy American laws in this country. If we proceed too far down this road, we will severely limit competition in the mass transit production field. This will have an inflationary impact on UMTA and local transit budgets, and could deprive American transit riders of superior rail cars. American jobs will be lost as a result of foreign builders cancelling plans to establish and expand assembly plants

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here and to invest in joint production ventures. The U.S. and individual states will also lose the revenues from taxes which foreign branch companies and subsidiaries would have been paid on income effectively connected with their U.S. operations had they located in this country.

Thank you very much, Mr. Chairman, for your kind attention to my testimony.

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Mr. JEFFORDS. I would like to point out, as has already been pointed out, the importance to Vermont—and I would like to make sure everyone is aware that Vermont has one of the lowest adjusted per capita incomes in the country—of these jobs. I would also like to emphasize the corporate fiction aspects in this particular situation.

We have Budd, a wholly owned subsidiary of a West German corporation, which seems to be treated or looked at quite differently than is Bombardier just because the corporate decisions flow through a different line of wires.

In other words, as I understand it, Budd happens to have a U.S. charter, and that seems to make things look differently. But the essence of the situation is that as far as Vermont is concerned, Bombardier is in our State, and it may be purchasing some other parts, many made in the United States, and some from other places. But the same thing would happen with Budd if Budd got this contract.

As far as Vermont is concerned, the cars are being produced there, and where the parts come from is another aspect. But, to us, Bombardier is a U.S.-Vermont corporation.

And I would say an examination of Bombardier's track record in this country is also revealing. When the company decided to build in Barre it made a commitment to develop a full fledged facility. Moreover, Bombardier was sourcing in the United States long before our buy American provisions were put into place.

When it supplied Chicago with cars 4 or 5 years ago, it built them with 78 percent U.S. components, and Bombardier is sourcing in the United States for components and vehicles being made in Canada for Canadian use only, which it is not obliged to do. In general, Bombardier has operated on the theory that if it is going to sell in the U.S. market it has to be a part of that market. And I think it is important to have competition for Budd in this regard.

It is better if the American system is what I believe it is—a competitive one. We are building that kind of competition in an area of critical and important needs.

So I would just like to emphasize those aspects. As far as we are concerned, Bombardier is a good old U.S.A. Vermont corporation.

The CHAIRMAN. Thank you, Congressman Jeffords.

Does anyone have brief questions?

Mr. MARTIN. Just one brief comment. Again, I want to salute my colleague, Congressman Jeffords, for his comment, and Mr. Kreizel.

As I pointed out, and as I think Mr. Jeffords put it so eloquently—they are talking about good Americans—these people have expanded and invested, and hope to continue to expand and invest and hire people in northern New York as well. And it fascinates me, as it does Mr. Jeffords, that we are being told one of these firms is foreign and the other is domestic.

The CHAIRMAN. Senator Stafford, do you have questions or further comments?

Senator STAFFORD. No, I do not. Thank you, Mr. Chairman, for our group. I express our appreciation to you for the opportunity to appear.

The CHAIRMAN. We appreciate very much your testimony and your coming to Washington. And certainly we understand the importance of the jobs. And I assume there is also a larger question

that many of us may not totally understand, but that is why we had the experts on earlier. So we make it very clear again—and we do know there are interests represented by different Members of Congress on different sides. So thank you very much.

Jim, do you have something?

Mr. JEFFORDS. I just have one other comment. I would say that as far as the experts are concerned, sometimes I find them more confusing than helpful when it comes to the equities of the situation. In this case, I found them more confusing than helpful.

Thank you, Mr. Chairman.

The CHAIRMAN. Well, that may be true. [Laughter.]

Thank you very much.

Congressman Lundine is here now. Did you wish to make a statement now?

Mr. LUNDINE. I am not under any time pressure.

The CHAIRMAN. Congressman Rangel?

Mr. RANGEL. Thank you, Mr. Chairman, for giving me the opportunity to introduce Dick Ravitch who has proven himself in the city of New York. And for those reasons he was selected to head up the largest mass transportation system that we have in the world.

Fortunately, he understands international trade agreements as well as he does the U.S. tax system. And, of course, he may be victimized by taking advantage of that where the taxpayers of the city and State of New York would be the beneficiaries. But I am certain that he is with us in trying to hammer out the best possible equitable situation for all of our citizens.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Moynihan?

Senator MOYNIHAN. Mr. Chairman, I would like to welcome my friend and fellow New Yorker, Dick Ravitch. He has some specifics he wants to speak to on this matter and we look forward to his testimony.

The CHAIRMAN. Thank you.

Mr. Ravitch? I might say that your entire statement or anything you want submitted for the record will be made a part of the record. You may proceed in any way you wish. In fact, if you would like to comment on any of the other testimony, that might be helpful, too.

STATEMENT OF RICHARD RAVITCH, CHAIRMAN, METROPOLITAN TRANSPORTATION AUTHORITY, NEW YORK CITY

Mr. RAVITCH. Thank you very much, Mr. Chairman. I would like to submit my testimony for the record and perhaps confine my remarks to a summary of the major points.

[The prepared statement follows:]

TESTIMONY OF RICHARD RAVITCH, CHAIRMAN, METROPOLITAN TRANSPORTATION AUTHORITY

Good morning. My name is Richard Ravitch and I am Chairman of the Metropolitan Transportation Authority of New York. I am the chief executive officer of an independent public authority which is responsible for the operation of the largest public transportation system in the United States, one which serves some 5.5 million riders daily, including 85% of all peak hour travellers entering Manhattan's Central Business District. Between our various operations, which include the New York City subway and bus system, the Long Island Rail Road, and the commuter services now operated by Conrail in our northern and western suburbs, we carry fully one-third of the nations public transit riders.

In my two and one-half years as Chairman, our efforts have focused on establishing a sound financial base for rebuilding the physical infrastructure of this immense regional transportation network. The physical assets of the MTA system — which are conservatively valued at $55 billion exclusive of real estate and rights-of-way — are now in a severe state of disrepair. This situation results from years of capital disinvestment and neglect. As a consequence, these systems are now strained to carry the numbers of people who depend on their operation. Poor transit service adversely affects the region's economy: its employment; its sales; its productivity, and the decision of its businesses about plant and headquarters locations.

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Last year MTA and New York State confronted these severe transportation problems by putting in motion an extraordinary local financing plan which contemplates spending nearly $8 billion over five years to rebuild the MTA system. Recognizing that the new Administration in Washington views public transit as a local responsibility, we accepted the challenge and formulated a plan that represents a unique attempt to use local resources to solve the capital needs of urban public transportation. Rather than relying solely on the federal capital assistance program, which represents the sustenance of every other transit property in this country, we asked that New York State authorize local taxpayers and local farepayers to assume the repayment of over $3 billion of debt to be issued over the next five years. This debt will result in either higher fares or higher taxes or both, but we in New York recognized that reliable and safe public transportation was well worth this price.

The key element of our rebuilding plan is the replacement of overaged subway cars and the purchase of new commuter cars. We had planned to replace 1,375 subway cars and purchase 316 new commuter rail cars. The projected cost of these purchases amounts to nearly $2 billion.

To help support this mammoth equipment acquisition and construction program we asked only one thing of the federal government: to accord public transportation the same tax treatment and the same tax benefits as exist for every other form of transportation.

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We thought this proposal to be consistent with the President's call to create a partnership between the private and public sectors in solving urban problems. We pointed out that when Congress enacted the investment tax credit in 1962, it was not made available for equipment used by the public sector on the theory that the public's demand for capital goods is inelastic, and this tax incentive was therefore not likely to spur increased production. Last year we were able to demonstrate to the satisfaction of Congress that this was not true in the case of the MTA. Congress responded by providing, as part of the Economic Recovery Tax Act of 1981, the benefits of ACRS deductions through safe harbor leasing for locally financed public transit rolling stock. This new provision of law provided MTA an economic benefit equivalent to what it originally sought, but still less than private transportation which also has the benefit of investment tax credit.

With a financing program in place, MTA set about the task of contracting for the purchase of rolling stock. While I appreciate that the Committee is most interested in the recent announcement of a proposed contract for 825 subway cars to Bombardier of Canada, it is important to place this proposed award, which is still subject to a public hearing and approval by both the MTA Board and the N.Y.S. Public Authorities Control Board, in the context of the events and decisions which preceded it.

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First, MTA took competitive bids for the purchase of 130 commuter rail cars, with options for additional cars in the event MTA's proposed financing program was fully realized. This contract was awarded to the Budd Co.; the options for an additional 186 cars were subsequently exercised, and MTA expects first delivery of its $400 million commuter car order from Budd in the fall of this year.

Second, MTA sought competitive bids for 325 subway cars, with options requested for up to 1,150 cars in total. Bids were received from Nissho Iwai American Corporation, representing Kawasaki Heavy Industries, and the Budd Co. Nissho Iwai submitted the low bid of $895,000 per car. Had MTA chosen to use the Federal funds, it would have been forced by Federal procurement regulations to award to Kawasaki on the basis of its bid.

However, in MTA's judgment the Nissho Iwai low bid was excessive and the Budd Company's high bid of $941,000 per car even more so. Questions were also raised at that time as to MTA's ability to sell bonds in the amounts required to fund payments for a full contract of 1,150 cars. MTA then proposed State legislation to authorize negotiation for the purchase of subway cars. We sought this authority for two reasons: first, to reduce the price of the cars, and second, to attract vendor-related financing on favorable terms to assure that payments under any subway car contract could be met. In October 1981 New York State authorized MTA to award subway contracts by negotiation, establishing as statutory criteria for award the factors of price, financing, delivery schedule, and New York State economic activity to be generated by a proposed contract.

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MTA subsequently negotiated with both Nissho Iwai and Budd for the first 325 subway cars. Nissho Iwai offered a more competitive proposal with respect to each of the four statutory factors identified in our State enabling legislation. The final award to Nissho Iwai was for $844,500 per car, with associated financing of approximately half the value of the contract at an effective interest cost to MTA of 12.25%.

We then proceeded to negotiate for the award of the balance of the planned order - 825 cars - with Budd and two other firms which had submitted offers in response to our new request for proposals: Bombardier of Canada and Francorail of France. Regrettably, MTA was unsuccessful in urging the Pullman Company to reenter the car building business and compete for this procuremnt. We understood from the outset that Budd would be somewhat disadvantaged with respect to its competitive position insofar as government-related financing was available, so we suggested an alternative form of financing that could be made available to support its bid. We suggested that Budd's parent corporation, Thyssen of West Germany, provide its credit to assist Budd in matching foreign competition. Access to Thyssen's credit would have provided MTA some of the same benefits as the ex-im vendor-related financing, to wit: security of financing source, flexibility with respect to MTA's ability to enter the long-term market during more favorable market conditions, and a short-term reduction in the amount of overall New York public financing (including City and State financing) competing for limited investor capital. This request was refused.

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With respect to the actual offers made by the three companies, both Francorail and Bombardier offered approximately equal financing terms, including financing of 85% of contract price, a 9.7% interest rate, and repayment over ten years. Budd offered financing for approximately 17% of the contract value, representing a portion of the value of propulsion equipment, undercarriages and carshells to be produced in Brazil and Portugal.

The absence of sufficient financing associated with the Budd offer made its proposal non-competitive. Without an offer of Thyssen or other Budd-related credit, and, without MTA's bonds yet having been sold, we were not in a position to commit to a contract requiring payments from our own farebox revenues of $600-$800 million within five years.

As significant as its was, however, the lack of favorable financing terms was not, itself, the only factor that led us to recommend Bombardier.

There were other considerations taken into account in MTA's decision. First, as a matter of prudent business judgment, MTA had considerable concern in placing so much of the responsibility for its five-year program in any one single company. As noted before, MTA has already committed to Budd for the manufacture of 316 commuter cars, a contract which, together with Budd's other commitments, has filled

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all production capacity for the foreseeable future at Budd's Red Lion assembly plant. In fact, had Budd succeeded in this contract, assembly would have taken place at a still-to-be equipped facility using a work force yet to be hired or trained. This would have entailed additional risks of delivery and manufacture to MTA.

Second, MTA placed considerable emphasis on the economic impact of this contract to New York State. In this regard, Bombardier committed to spend at least $104 million for components manufactured in New York State, while Budd proposed New York State expenditures of $79 million, including the proposal for final assembly in Hornell, N.Y. Taking account of both the labor intensity of final assembly, and the repeat orders likely to be generated from component assembly, it was the opinion of the New York State Department of Commerce that the Bombardier award would better serve the economic interests of New York State. In fact, as between the French and Canadian offers, Bombardier prevailed because of its emphasis on N.Y.S. content.

Third, the contract price differential between the Bombardier bid and the Budd bid was much smaller than has been suggested. While Budd has cited its low bid as $770,768, well below the Bombardier price of $803,485, the Budd figure does not take into account certain contract provisions, insisted upon by MTA, relating to production risks, payment schedule and use of New York State component supplies which were included in the Bombardier bid. Taking account of these factors, the Budd proposal is more accurately valued at approximately $800,000 per car, or a difference of about .005% from the Bombardier bid.

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Fourth, Bombardier had entered into a license agreement with Kawasaki Heavy Industries so that its cars would be substantially identical to the Japanese cars that the MTA has already committed to purchase. Similar engineering offers the advantage of compatability with the other new cars of the MTA fleet with consequent benefits for maintenance, part inventory requirements and the like.

In summary, it is MTA's judgment that the proposed Bombardier award is both in accordance with the statutory criteria established by New York and in the public interest. What is more, it is a transaction of which we at MTA are extraordinarily proud. At a time when long-term tax exempt interest rates are at record highs, and various New York City and State public institutions are competing for limited investor capital, we have secured an alternative source of capital to fund this urgently needed infrastructure improvement. By rejecting the traditional process of competitive bidding in favor of business-like negotiations we have saved the transit riders of New York, who, I repeat, are the only transit riders in this country that are asked to pay for new rolling stock through the farebox, at least $100 million in capital costs (as compared to original "low" bid). By reducing the cost of financing, we have saved on interest charges (assuming an MTA bond rate of 14%) in excess of $90 million over the term of the Financing. In 1987, when our savings peak, we will save every New York City straphanger a nickel a day in commuting costs.

Further, the federal fisc also benefits substantially because, by securing a source of financing outside the traditional tax exempt market, we have reduced the amount of tax exempt bonds that will be available to tax payers.

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I recognize that this Committee is concerned about the implications of this contract for the American economy and I appreciate the legitimacy of this concern. Let me address it.

It would be MTA's strong preference to award this and every other rolling stock contract to a domestic manufacturer. However, in the case of the manufacture of subway and commuter cars, there is only one U.S. producer: the Budd Co. We have a long and successful partnership with Budd and hope we can look forward to a continuing relationship. But there is as a practical matter a limited quantity of work that Budd can accept, and a limited amount that MTA is willing to commit to any single manufacturer.

And insofar as the domestic economy is concerned, it is my judgment that this issue has been somewhat distorted by recent press reports. Bombardier has committed to purchase components representing 40% of the car price in the United States, including undercarriages, gears, motors, brakes, air conditioning, and the assembly-related costs which will be incurred in Barre, Vermont. This compares with the buy America requirement, applicable where UMTA funds are involved, of 51%. Let me emphasize that for only 11% difference in the value of domestic content it has been suggested that New York give up 85% financing at 9.7% interest.

Furthermore, New York represents the last major rail city in this country to purchase foreign cars: Boston and Chicago have purchased cars from Canada, Philadelphia and Cleveland from Japan, and Atlanta from France. I have been advised that Pittsburgh is about to award a contract to a German company, and Washington, D.C., the nation's capital, whose funds are provided 100% by this Congress purchased its subway cars from Italy. What is the distinction? Why is New York singled out for obliquey? The difference is that we do not use federal money. All of these other

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cars were paid for primarily with federal funds. New York took the U.S. government as its word: "Do not look only to the Federal Government if you want to rebuild your system, find local resources to do the job". We went out and made a business deal — one that the law permits, one that the President's policy encouraged us to make, a deal that is overwhelmingly in the interest of the taxpayers and fare payers of New York. Whose interest is served by denying us the benefits of this contract?

The issue of domestic manufature has apparently come under discussion in part as a result of MTA's acknowledged intention of entering into safe harbor leases upon delivery of this equipment. I should note at this point that MTA would expect to receive approximately 25% of the eventual purchase of this equipment through safe harbor leasing, and it is our present intention to use these funds to purchase an additional 226 subway cars in a contract that is yet to be negotiated. Some members of the Committee have questioned whether safe harbor lease benefits should be available for equipment which does not comply with the buy America standards of the UMTA Act. I would respectfully suggest to the members of this Committee that imposing this standard with respect to the determination of whether MTA's new subway cars constitute "qualified lease property" would be an extraordinary act without any precedent in the tax code, the sole effect of which would be to create a heavy additional expense to New York fare payers and tax payers, thus penalizing New York for its efforts to minimize costs.

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Allow me to explain: As I indicated earlier, only the New York system relies entirely on local funds for rail and bus procurement; every other transit agency utilizes a combination of 80% federal and 20% local funds. When other agencies use federal funds, the buy America provisions must be met, so such a restriction would as a practical matter only effect the MTA, and only serve to encourage award by MTA to Budd without reasonable competition in the marketplace.

In this context, it is worthwhile to note that no such similar restriction exists in the tax code with respect to the availability of the investment tax credit or ACRS deductions for other equipment. I am informed, for example, that substantial amounts of equipment acquired by U.S. companies — particularly by the airline and container shipping industry — are produced abroad and financed with a combination of export subsidies and conventional or safe harbor leases.

Moreover a private transportation company can acquire railroad cars abroad and enter into safe harbor leasing arrangements with respect to these cars, obtaining the benefits of both the investment tax credit and ACRS deductions. Why should the MTA be subjected to more restructive rules?

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Further, I am well aware of the fact that Senator Dole has expressed reservations about the wisdom of the transit safe harbor lease provision in general. I have previously responded at length to the Senator on this subject and am attaching a copy of that response to this statement. I would like to touch just briefly here on these concerns.

Two arguments have been raised in opposition to the transit safe harbor leasing provision. The first suggests that it is an inefficient form of subsidy; the second questions the appropriateness of transferring deductions from tax exempt or otherwise non-taxpaying entities to tax paying entities.

Let me first comment on the issue of efficiency of safe harbor as distinguished from a direct federal grant. In 1981 MTA received approximately 18% of the available federal funds in the transit capital program. Our share had little to do with the local effort we are making to rebuild our system, or to the fact that we have one-third of the nation's transit riders. In summary, a direct federal grant has little to do with real need, and certainly fails to reward those localities who have taken it upon themselves to assume the burden of transit capital finance. Safe harbor, on the other hand, rewards localities only on the basis of local need as reflected by the willingness of local taxpayers and farepayers to purchase new rolling stock.

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Second, as to whether it is inappropriate to provide tax incentives to assist non-taxpayer entities, I suggest that this view is totally out of step with current realities. The tax code, for example, has traditionally been used to subsidize investors in low and moderate income housing sponsored by non-profit entities. ACRS deductions are currently being used by private investors to reduce rentals on tankers leased to the United States Navy, to reduce the cost of telephones leased to the Department of Energy, and even to reduce the cost of computers leased to the United States House of Representatives. And, tax-exempt (under treaty or otherwise) foreign corporations frequently supply major items of equipment to United States users and realize, thrugh finance lease payments, the benefits of accelerated depreciation allowances and, in a number of situations, the investment tax credit. It would seem somewhat inconsistent to suggest that these uses of the tax code are appropriate, whereas assistance to capital-starved tax supported public transportation — a service essential to the economic well-being of our nation's largest cities — is inappropriate.

I know that over the next several weeks this Committee will be considering whether to retain, modify, or repeal safe habor leasing. I would be remiss if I did not take this opportunity to tell you precisely how repeal of the transit provision would affect MTA's rebuilding program. As you know, if safe harbor is repealed, other forms of private transportation will still have access to conventional lease financing opportunities, so their damage will be mitigated considerably. But for public transportation the door to lease financing will be effectively closed and the effects will be catastrophic.

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Included within MTA's rebuilding program is a projected $480 million of resources to be raised from equity in safe harbor lease transactions. If the transit safe harbor lease provision is repealed, we will immediately cancel a portion of our commuter car order which represents 100 cars or approximately $100 million. We will suspend plans to purchase 226 subway cars for our IND-BMT division. And we will be forced to cut from our capital plan other essential infrastructure improvements which represent approximately $130 million of expenditures. In short, improvements that have been programmed by MTA in reliance on last year's tax bill, and which the public now expects, will be stripped away. I do hope that this Committee, as it considers safe harbor leasing and related issues, will give full consideration to the actual interests and needs of the transit riders and tax payers of our nation's largest city.

Finally, I would specifically urge that the Administration move quickly to clarify its position with respect to the Bombardier award. I acknowledge that there are important policy issues to resolve, but for the MTA the adverse effects of delay by virtue of uncertainty will be substantial. Not only will the status of the most important contract in our entire rebuilding program be left "on hold", but the financial consequences of delay owing to escalation will be (assuming an annual inflation rate of 6%) in excess of $100,000 a day.

I would be pleased to answer any questions the Committee may have.

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Mr. RAVITCH. I am very grateful for the opportunity that you have afforded us to present the facts to this distinguished committee. And I would like to place the decision that we made in an appropriate context.

New York has the largest mass transit system in the country, a subway system which is only part of our vast transportation complex which moves 5½ million people daily. Without it, the economy of the city cannot function. The value of property would drop precipitously without a safe and reliable subway system.

This subway system has been subject to substantial disinvestment starting back in the days of private operation, and, thus, it is in a state of serious disrepair.

Two years ago we put together a plan to rebuild New York's public transportation systems in the New York metropolitan region. We were aware of the policies of the Federal Government, indeed, the injunction of the President of the United States, to not rely solely on Federal funds, but to use the resources of our own taxpayers and our own fare payers to help rebuild our system. And what is unique about New York is not just its size and the dependency of the economy upon the functioning of this system, but the fact that we are the only locality in the United States that was prepared to make the tough political and economic decision that the cost of rebuilding our system would be borne in largest part by the taxpayers and fare payers of New York.

Before the legislation was enacted in New York State that authorized MTA to do what I have just described, we had contemplated a contract for only 325 new subway cars. Our need was for over 1,400. And at that time the only source of funds available were Federal funds. And we took bids. There were two bidders. The Budd Co., their bid was $941,000 per car, and the Kawasaki Co. of Japan, and their bid was $894,000 a car.

I looked at those bids very carefully. I looked at the laws that the State of New York had just enacted which gave us permission to borrow and to use taxpayer and fare payer funds to finance these car acquisitions, and came to the conclusion that there were several factors that had to be taken into account prior to award. One was price. And I came to the business judgment that we could obtain a better price by negotiation than we could by competitive bidding.

Second, that it was absolutely desirable of trying to encourage more competition in the process of negotiating an award.

We solicited an interest from the Pullman Co.; we asked them to consider submitting a proposal. They refused to do so. The Canadian company, Bombardier, and the French company, Francorail, submitted proposals and indicated a willingness to negotiate. More competition, the better it is for the public.

We then came to the conclusion that it was essential that financing be considered a part of our decision. With escalation, the cost of these cars would be in excess of $1 billion. We did not and would not have the cash on hand to meet these obligations. We would be dependent on sales in the municipal bond market at a time when tax-exempt interest rates were at their highest in recorded history. And we thought it prudent and sensible to go out and find out whether any of the prospective vendors were prepared to provide

financing, a good old American concept: buy now, pay later, overwhelming in the interest of the taxpayers and fare payers of New York.

And, last, we were concerned about the economic impact in New York. And indeed the statutory criteria under which we are obligated to function makes clear that the economic impact of New York is a factor that we would have to take into account.

With those factors in mind, we proceeded to entertain bids and to negotiate with the three companies: the Budd Co., Francorail, and Bombardier.

We were aware of the fact that the Governments of France and Canada were prepared to provide financing. We understand that this is the customary practice in export trade. We were advised by counsel that the efforts to obtain the most favorable financing terms from those two countries were consistent with United States laws and were consistent with the policies of the administration.

Indeed, I might jump ahead for a moment and say that some 3 weeks ago before we made our final decision, I received an unsolicited call from Mr. deKieffer advising me that he wanted me to know as a matter of courtesy that the U.S. Trade Representative had received inquiries from the French and Canadian Governments about what the U.S. position would be on a proposed contract with France or Canada. And he wanted to give me the courtesy, which I appreciated, of letting me know that the administration would take no unilateral action whatsoever with respect to this contract if we were to decide to award it to a foreign company.

He advised me further, and properly so, that he made that statement without prejudice to the judicial process that would go on if there was a complaint filed with the Commerce Department, and if subsidy and substantial injury to a domestic manufacturer could be proved.

We recognized that fully and proceeded with our decision and our negotiations, and concluded that the Bombardier offer was in the best interest of the people of New York.

Taking into account price, financing terms, economic impact in New York, and a whole variety of other concerns which I will come to in a minute, we concluded that this was the best deal.

Let me digress if I may for 1 minute, Mr. Chairman, with respect to the safe-harbor leasing issue.

Approximately 1 year ago I was struck with the fact that every private form of transportation in this country had the benefit of the investment tax credit under existing U.S. tax laws, and I thought it only fair and equitable that public transportation be entitled to receive the same economic benefits, and I so suggested to the members of this committee and to the administration and to the members of the Ways and Means Committee.

The Congress, in its wisdom, decided not to confer the benefits of the investment tax credit on public transit, but rather to confer the benefits of the newly enacted safe-harbor leasing provisions, which provide us roughly the economic equivalent of the investment tax credit under old law. And we have utilized this provision and intend to utilize it with respect to our mass transportation commuting vehicle purchases.

If I may just comment on something that Senator Heinz said, the Congress, in its wisdom, decided that foreign use does not qualify for ACRS even if the property is made here. However, the Congress in the law made it very clear that domestic use is controlling and that the benefits are available even if the manufacturer is abroad.

I will come back later to some observations about the relative benefits of the safe-harbor leasing.

Let me now talk to the question of our decision to award this contract to Bombardier and not to Budd.

There were many reasons why we made this decision. One of the major reasons that we decided not to award to Budd, in addition to the financing, and in addition to the greater impact on New York's economy by the Bombardier order was the following:

One, we have in place contracts for almost $400 million with the Budd Co. to construct commuter cars for our Long Island Railroad and for the Westchester commutation service. And the Budd Co. has expressed a keen interest in bidding on our next car order, which will be submitted in July, for 225 cars for our IRT-BMT system. And since we have enjoyed a good experience and consider the Budd Co. to be a good company and a highly qualified manufacturer, and we consider them a serious contender for that subsequent order, I was concerned, as were my colleagues, as a matter of good business practice as to whether or not one puts all one's eggs in one basket, whether you give $1 billion of business to only one company.

Given the experience we have had recently with respect to faulty manufacture of subways, or, specifically, the trucks or undercarriages, the problems we have had with the Grumman buses, we are very concerned about reliability and performance. Whereas, we think the Budd Co. is unquestionably qualified to perform, we were concerned about placing the extraordinary amount of business in the hands of one company.

Second, we are aware of the fact that the trade publication indicates that Budd has a backlog of 1,058 cars as of the year ending 1981, and was advised by my counterparts in Baltimore and Miami that Budd was quite late in delivering existing orders.

And in a report to the GAO, Budd informed that their capacity was 425 cars per year.

In addition, Budd's proposal to assemble in Hornell, N.Y., though obviously a welcome suggestion from the point of view of New York's economy, was also a cause of concern to us because of the fact that they had not assembled there before, and there was not an experienced and proven work force in Hornell ready to assemble these cars.

Next, we were advised by our accountants, Ernst & Whittey, a national accounting firm of considerable reputation, that given the financial condition of Budd, that they urged us to consider—this would be on the public record in New York—that before we gave more than $400 million or perhaps as much as $700 million to the Budd Co., which they may get if they are successful on the R-68 bids, that we ought to seek a backup of credit from the parent company.

Next, we looked at the question, as I indicated earlier, of New York impact. The Bombardier Co. offered more, in dollar terms, 16

percent of the value of the car, compared to closer to 12 to Budd, despite the fact that the cars would be assembled in Hornell.

Next, the Bombardier Co. was going to utilize engineering that the Japanese company, Kawasaki, has done for the last year with respect to these cars. They are manufacturing, as was testified to earlier, 325 cars of the first portion of this IRT car order. And that engineering is known to us; it is sound, and it would produce a car that would contain the same components and make a consistency within our IRT fleet that would reduce our maintenance expenses and simplify our inventory control.

Next, the distinction in price that was referred to between the Budd's offer of 770 and the Canadian offer is not what it appears to be for the following reasons:

No. 1, MTA has insisted that for the protection of the public that there be a 3-percent retainage held in any contract. That is common prudent business practice exercised by every governmental entity and probably by private entities as well.

Budd indicated that they could not live with that, and if they were forced to, there would be an increase in price of over $2,000.

Next, Budd indicated that if they were forced to buy their air brakes from New York Air Brake Co. in Watertown, N.Y., which we had indicated a preference for, that they would have to get an increase in their contract price of $3,819 a car; that their low price was predicated upon the assumption that they would buy the brakes from WABCO.

Bombardier offered both 3-percent retainage and New York Air Brake components without any increase in price whatsoever.

In addition, it should be pointed out that the Budd's offer contemplated the construction of the truck or undercarriages, in Brazil, not in Ohio by the Buckeye Co., which the Bombardier Co. promised in their offer. We have never bought trucks from Brazil. They have not qualified from an engineering point of view to meet the tests of the New York City Transit Authority. Now we understand that we would have subjected them to those tests and they might have passed, but Budd made it clear to us that had the Brazilian trucks not passed, and they then had to go to Buckeye, in Ohio, to buy the trucks, there would be an increase in price of some $23,000 per car.

So I would respectfully submit, gentlemen, that the difference in price in actuality is far less than what it appears to be.

Next, we have a heavy responsibility in New York. We are obviously conscious and respectful of the laws of our country. We did nothing to violate them. We took the statutes and the pronouncements of our Government and worked within them to the benefit of New York City residents, taxpayers and fare payers.

If the policies of this Government were to change with respect to these trade practices, obviously we would abide by them. But we not only think that we did what was statutorily mandated for us in New York, but what we are very proud to say we achieved substantial savings to the public by the nature of the negotiating process we entered into.

The issue here, sir, is if this financing is denied us because of actions of the administration of the United States, then the only effect of that will be to cost the taxpayers and fare payers of New

York more money, a minimum of $100 million and a maximum of $300 million.

We see no reason why this transaction should be singled out. I recognize that is not the intent of this committee, but some of the testimony from the administration witnesses seem to indicate that they are looking at it from that perspective.

We see no reason why, when we did what the law required, when we did what the administration said was the policy of this administration, when we did what New York State law required us to do, and when we saved a lot of money for the people of New York, why that wasn't the right thing to do, and why we shouldn't continue to act that way until the rules of the game are changed.

Let me say, in conclusion, Mr. Chairman, with respect to safe-harbor leasing. As I indicated earlier, it was our strong conviction that public transit should be entitled to the same tax benefits as private transit.

It is our view that the concern that the Congress had when it first passed the investment tax credit with respect to the alleged inelasticity of demand for goods used or owned by Government does not apply in the case of mass transit, but, in fact, there was enormous elasticity to our demand for goods, and that the availability of the tax benefits, or equivalent, would provide for a great deal more economic activity and benefits to the New York City transportation system.

In point of fact, if the Congress were to reverse the rules with respect to safe-harbor leasing and make them inapplicable to mass transit, it would deprive us of $500 million of needed capital for the rebuilding of our system.

And I might add that what we would lose in the process, we would cancel 100 of the 300-odd commuter cars presently on order with Budd, and we would not proceed with the 225-car order that I described earlier that is going to be let in July.

You, Mr. Chairman, have properly raised two questions and I am sure more, with respect to safe-harbor leasing. One is the efficiency issue.

If I may, sir, comment that we believe that this is the most highly efficient way for the Federal Government to subsidize this particular activity, assuming the Congress were to decide that this activity was one that was entitled to subsidization. And the reason it is efficient is that New York gets only 18 percent of all Federal UMTA funds.

This system of using safe-harbor leasing creates enormous incentives for local governments to spend more money to improve public transit, and the benefits are rewarded commensurate to the expenditures by local governments for more funds. And, therefore, I would argue it is a far more efficient way because it is far more reflective of actual need than formula used in the distribution of Federal aid.

Next, Mr. Chairman, you have properly raised the question as to the use of safe-harbor leasing by a nonprofit entity. I would respectfully like to call to your attention the fact that mass transit is not the only nonprofit entity that takes advantage of this and other comparable provisions under the Internal Revenue Code.

ACRS deductions are currently being used by private investors to reduce rentals on tankers leased to the U.S. Navy, to reduce the cost of telephones leased to the Department of Energy, and even to computers used by the House of Representatives.

The Chairman. They need them. [Laughter.]

Mr. RAVITCH. And, further, Mr. Chairman, as you well know, it has been the public policy of the U.S. Government for some time to encourage the production of low income housing through nonprofit—sponsorship of nonprofit entities, and they receive the full benefits of accelerated depreciation and the investment tax credit with respect to eligible equipment in those instances.

I would respectfully suggest that where the Congress has indeed the responsibility to weigh all of the factors involved in making this policy that what you did last year for public transit is not unique, that it is desparately needed, that it is rational, equitable, and efficient.

In conclusion--I thank you for giving me so much time—I would like to emphasize the fact that we are doing what we think is in the best interest of the people of New York and consistent with the laws of our country.

We will abide by any rules that the Congress in its wisdom should subsequently make that could affect our future orders differently. But we see no reason, sir, why we should be penalized retroactively and hurt economically for things that we did that were consistent with public policy and the laws of our country.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Ravitch. And I want to thank you for an outstanding discussion of the issues, both the tax and the trade policy issues. Certainly if I had your position in Government I would make—I probably wouldn't do it as well—but I would try to make the same case that you have made this morning. But there are some broader questions that must be addressed. And, as you have indicated, if those questions are addressed, certainly you will abide by whatever the results may be.

And, again, I would underscore that this is not a hearing or trial. We are trying to decide who is right and what may be wrong. But there is a very broad question that must be addressed as far as the predatory credit practices are concerned.

So I would hope with that in mind that we can objectively look at this problem, maybe even more objectively than the New York Post wrote about our role in this problem this morning. But they have never been known to be objective, so that is no problem.

Senator Moynihan, do you have any questions?

Senator MOYNIHAN. I thought the administration found the New York Post exceptionally objective last October. Am I wrong in that?

The CHAIRMAN. I haven't consulted the administration lately. [Laughter.]

Senator MOYNIHAN. October 1980, I meant, Mr. Chairman.

That was superb testimony, Mr. Ravitch, and we want to thank you for it.

I wonder if I could just ask you to take us through an important point about the market effect of safe-harbor leasing in the allocation of mass transit resources? You stated that New York City, the

metropolitan region, received 18 percent on average of the Urban Mass Transportation Authority capital funds.

Mr. RAVITCH. Of capital funds, Senator Moynihan.

Senator MOYNIHAN. Capital funds. Would I be wrong in my understanding that about a third of mass transit rides in this country are on your system?

Mr. RAVITCH. That is correct, sir.

Senator MOYNIHAN. Mr. Chairman, I make that point. And our chairman used to commute to the Brooklyn Law School on that system. About one-third of the mass transit use in this country is in the New York metropolitan area. You cannot have those buildings that go up in the air unless you have those trains that go under the ground. And yet it is not feasible that the Congress, excepting with regard to grain subsidies and water projects, would ever allocate 33 percent of anything to one State. It cannot be done. And yet the market needs are of that order.

The tax system we put in place makes it possible for the allocation of resources in relation to actual demand.

Would I be correct in saying that absent the present tax provisions, you could not buy as many cars as you are buying? Your natural demand would be inhibited by the constraint of the Federal appropriation.

Mr. RAVITCH. That is correct, Senator. I indicated in my testimony that we would reduce by over 300 cars the number of cars purchased if we lost the benefits of the ACRS deductions.

Senator MOYNIHAN. Right. The overriding concern in the accelerated depreciation and the safe-harbor leasing is to encourage certain types of companies, or organizations, to expand investments in capital goods. And it works with you, whereas, the appropriation process of a Federal program has much less pronounced effect.

Mr. RAVITCH. It does indeed for two reasons. One, because the quantity of money available, and particularly given the budgetary problems that the U.S. Government faces. And that amount of money is diminishing. There is the second reason: These are long-term contracts. And the laws of this country make no provision whatsoever to enable public transportation authorities to enter into long-term procurement contracts. Properly, we are subject to the annual appropriation process, and, therefore, it is a much more expensive and uncertain process than the one we have entered into.

Senator MOYNIHAN. So there is one sense—and I will just stop there—in which, not specifically perhaps, but there is a fairly stated sense that if you keep the present arrangements in place you will buy those further 400 cars from the Budd Co., and if the arrangements are changed it becomes problematic whether you will be able to do so.

Mr. RAVITCH. Yes, without prejudice.

The Budd Co., as I have said, are a fine company and we enjoy doing business with them.

Senator MOYNIHAN. Thank you very much. Again, thank you for your testimony. I think it cleared up a lot of matters.

The CHAIRMAN. Congressman Rangel?

Mr. RANGEL. Thank you, Mr. Chairman. As a member of the Ways and Means Committee, some of us have deep reservations about the safe-harbor leasing provision. And when we did have an

inquiry by the full committee, the administration was unable to determine just how much of a shortfall was added as a result of these laws in revenue. Certainly it has heen reported that there has been an inequitable result in some of the most profitable corporations merging and not paying taxes. But it is ironic that when a public corporation is able to receive the benefit—and, therefore, the consumer being a taxpayer—that this would highlight the interest as to whether or not the Congress was right in its judgment in providing this type of a tax policy.

And so I am confident that when we do take another look at the safe harbor that you will have a lot of company in the profit-motivated corporations sitting with you to share whether or not we made a mistake or not.

My question, however, is that in the course of making this decision on behalf of the MTA, did your counsel have the ability to share your concerns as to what our foreign trade policies were? And did you consult the WIT representatives of our Government? And if you did that, at any time were you advised that the actions that were being taken by the Mass Transit Authority could be violative of not only Federal law but Federal trade policy?

Mr. RAVITCH. I was advised by counsel that the transaction we entered into was legal and consistent with the laws of the United States. I was made aware by the telephone call from Mr. deKieffer, which I testified to earlier, that the matter was under review by the administration. And I would like to repeat that the administration, he advised me, would take no unilateral action whatsoever with regard to this, and that under the law, somebody who claimed injury could bring an action before, as I understand it, the Commerce Department. And I understand that Mr. Horlick who testified earlier would participate in the impartial judgment as to whether or not there was subsidy and whether or not there was substantial injury.

We discussed this with both the French and the Canadians. We were all satisfied that there was no substantial injury; and that there was no violation of law.

Mr. RANGEL. My last question as it relates to safe harbor, when the Ways and Means Committee and the Senate Finance Committee was considering this provision generally, did you and your staff not participate with the staff members of both committees in an attempt to have incorporated into that law the interest of mass transit throughout the United States?

Mr. RAVITCH. Yes, Congressman, we did.

Mr. RANGEL. And while there was not total agreement during those discussions, is it safe to say that the final law that was hammered out and eventually worked out in Congress specifically intended to provide incentives for the mass transit industry?

Mr. RAVITCH. That is correct, Congressman.

Mr. RANGEL. And so you have taken advantage of this. It wasn't a question of a loophole, it was the question of the Congress specifically intending to give some type of incentives to America's mass transit industry.

Mr. RAVITCH. That is correct, sir.

Mr. RANGEL. I think you made a good case. Thank you so much.

Mr. RAVITCH. I might amplify an answer to a question by saying that Senator Moynihan referred earlier to the fact that New York was the last major city in this country to buy foreign cars. That is absolutely factually correct.

I would like to point out that the distinction between our purchase and the purchases of the cities that Senator Moynihan read off, is the fact that they all used 80 percent Federal funds to buy their cars. We looked not one wit to the Federal taxpayer, except again to the extent safe-harbor leasing is available to us. But there is no Federal UMTA funds involved in our purchase. That is the distinguishing factor between New York and other cities, and, as I suggested earlier, it seems to me consistent with the policies of the President, and with the Congress steady reduction of public assistance for mass transportation.

But I want to point out that what is significant is that given the fact there was no Federal money, we had to find the financing. We had to be able to pay for these cars. Therefore, it was properly an important consideration in our determination as to what kind of financing would be provided.

We were aware of the fact that the Budd Co., could not get comparable credit. We discussed over the last 5 months with the Budd Co., and, indeed, tried many ways to assist them in coming up with a method by which they could provide comparable financing. We asked whether or not their parent company, the Thyssen Co., a company of very substantial credit, might not provide the credit. They did not have to provide the cash. All they had to do was provide the credit, and we could have issued our tax exempt paper at a very low rate with the Thyssen credit to secure this contract.

And the sole stockholder of the Budd Co., flatly rejected any suggestion to provide 1 penny of credit to this transaction.

The CHAIRMAN. Senator Bentsen?

Senator BENTSEN. I might make a comment on this. Mr. Chairman, I cannot quarrel with Mr. Ravitch in filling his responsibilities and trying to do the best he can for the entity be represents. I have a comparable situation developing in Houston, where I have been advised there, that the French have talked about making some very favorable financing. But we run into these conflicting things insofar as our national interest.

I look at a situation where the Brazilians are now coming in on long feeder airlines with an aircraft that is being financed at certainly extremely competitive rates, and obviously a subsidized rate, which will cost us American jobs. Yet, at the very same time we see the administration talking about cutting back on the funding of Eximbank.

Now the only way we are going to get these other countries to comply with the agreement—and that, for our country, the matrix, it works out to about 11.25 percent interest—the only way we are going to get them to comply, is if we have some muscle, and I think that has to be with the Eximbank. I do not believe that for us to cut the funding of Eximbank, I do not believe that that really makes us competitive. If we are going to force these other countries to agree and comply with that, we have had in a formal agreement, that we have to see that the Eximbank is competitive and can do the financing.

I know we had a situation the other day down in Mexico City where you had the French contractor represented down there, and you had the German contractor, and you had the U.S. contractor, and as soon as the action was taken on the Eximbank the American contractor's representative just picked up his bag and came home.

So we ought to look at the long-term interest involved here. Again, I cannot quarrel with you, Mr. Ravitch, over what you have tried to do representing your particular entity, but I do believe that we are going to have to see that the Eximbank is in a position where they can slug it out on an even playing ground.

Mr. RAVITCH. May I make an observation, Senator?

Senator BENTSEN. All right.

Mr. RAVITCH. The representative of the U.S. Treasury testified earlier that whereas he could not comment on the willingness or the desirability of the Canadian taxpayers' decision to subsidize a New York subway car purchase, he certainly wouldn't think it was something that the United States taxpayers should be prepared to subsidize.

I interpret that to mean that the administration does not wish to provide a comparable subsidy.

Senator BENTSEN. And I would argue that we ought to keep a few of those jobs here, that we should not be exporting them overseas. Those people ought to be earning incomes here and paying taxes here, and that will help take care of part of it.

Mr. RAVITCH. I certainly do not disagree with that as a matter of public policy. Further observe, Mr. Chairman, that the day after this contract was awarded there was a substantial debate on the floor of the Parliament in Canada and the opposition criticized the Government for providing so much subsidy for New York's subway system when mass transit in Canada was in such severe need.

And I respectfully observe that the only consequence of an administration decision to deny the people of New York the benefits of this contract, would be to transfer a burden from the Canadian taxpayers to the New York taxpayers, and if the Canadian taxpayers wish to assume this burden because they think it is in their interest to do it, I cannot imagine whose interest is served by denying the benefit of that to the people of New York.

The CHAIRMAN. Senator Heinz?

Senator HEINZ. Thank you, Mr. Chairman.

Mr. Ravitch, could you just clear up something for me? You said there is no Federal support here for this. I understand there is no matching money for these particular rail car purchases. But you are using the new safe-harbor leasing provisions, which is a tax expenditure as we know.

Mr. RAVITCH. I so stated, in my statement.

Senator HEINZ. Indeed, it is a new kind of tax deduction. It is not just an expansion of an old one.

Second, my understanding is that you are going to have to use some—maybe a lot—of tax-exempt financing either from the State of New York or from the authority itself, and that is a tax expenditure.

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Third, I do not think you could operate these cars without continuation of Federal operating assistance. At least that is what you have been urging me to support on the Banking Committee.

So I do find that there is a considerable Federal component here and I don't think you would deny that it is very important.

Mr. RAVITCH. I so testified, Senator.

Senator HEINZ. Now, I also have to say that I don't quite understand your position when you suggest that you want to be free, you want to have the total license to practice free trade and buy from whatever country offers you the best deal. That is what you want. That is what you are doing.

Mr. RAVITCH. Excuse me, Senator. That is not what I said.

Senator HEINZ. No. I am saying that is what you are doing.

Mr. RAVITCH. Yes—within the laws of the United States.

Senator HEINZ. Yes. You are not doing anything illegal. I am not accusing you of doing anything illegal. I may not necessarily agree with what you are doing, but that is another issue.

But, in any event, you want to have the freedom, and you are using the freedom to buy—to get the best deal for MTA—and I suppose any of us, were we in your position, would do that.

On the other hand, the legislation that you sought from the legislature doesn't have Buy America provisions in it, which you apparently have some objections to, because you do not want to buy America. It has Buy New York State provisions in it.

You, yourself, in your statement mentioned that one of the things you wanted the Budd Co. to do is buy some airbrake components from Watertown, N.Y. Now, isn't that a little inconsistent?

Mr. RAVITCH. Senator, I don't think so. I never said I didn't want to Buy America. Obviously, as a citizen and as a public official, as a matter of personal conviction, I would much prefer to give this business to the United States, and if it were possible and consistent with the interest of New York taxpayers, that all the work go to American workers. Obviously, that would be preferable.

Our reason for not using Federal money was not because of the Buy America provisions. We live with the Buy America provisions all the time.

Senator HEINZ. I am not talking about the Federal money. I am talking about the fact that you went to one company and said, "You've got to buy certain components in New York State even if they are more expensive." In your testimony a moment ago you said that when you were reviewing the Budd Co. bid, you said, "Well, if Budd met all our requirements such as buying the airbrake components from Watertown, its bid would be higher." Is that not correct?

Mr. RAVITCH. Senator, what I said was that the law of New York, as you correctly point out, has a Buy New York component in it, not a fixed percent.

Senator HEINZ. Who got that—who proposed that law? When was it proposed and when was it enacted?

Mr. RAVITCH. I will tell you.

Senator HEINZ. Recently by you in New York.

Mr. RAVITCH. That is correct, Senator.

Senator HEINZ. All right. I do not want to prolong this discussion, but that is your policy. You can blame it on the Legislature of New York for going along with it, but it is your policy.

Mr. RAVITCH. I don't want to prolong this. The Legislature of New York made a determination to maximize without applying any percentages, and we follow that. That was not part of my original proposal to the New York State Legislature.

Senator HEINZ. Right.

Mr. RAVITCH. If the Congress of the United States says in its wisdom that 51 percent of the content of a car paid for with Federal funds has to meet Buy America standards, we are glad to comply with it.

Senator HEINZ. I understand. Look, I am not accusing you of having done anything wrong. I am just trying to get some facts on the record.

From everything I know, you run a terrific authority and you do everything right. You may not make the decisions I agree with, but that is something else.

Now, as I understand it, you are aware that 59 percent of the Bombardier purchase is foreign made, and you are aware that 85 percent of the Budd purchase is American made, No. 1, and, No. 2, you yourself have testified to the fact that although you can play with the numbers about the amount of difference, the Budd bid per car was cheaper. Is that not correct?

Mr. RAVITCH. No, sir, it is not totally correct. It is partially correct.

First of all, I think people can honestly argue the percentages of the U.S. content in each of these proposals, but our calculations of the Budd proposal was that of 78 percent U.S. content—not 85.

Senator HEINZ. What was the number on Bombardier?

Mr. RAVITCH. Forty percent U.S. content.

Senator HEINZ. All right. So there is still about twice as much American content in Budd as Bombardier, and, second, the Budd offer—and we can argue about what the price should have been under the New York State provisions—but the Budd bid was still, nonetheless, cheaper.

Now, my question is: Why is it in the interest of the United States of America, not your interest—I understand your interest—why is it in the interest of the United States of America for the MTA to buy something that's more expensive and it has half as much components American made as a competitive offer?

Mr. RAVITCH. I would be glad to try to respond, Senator.

First of all, I think the United States has an interest in the economic survival of New York.

Senator HEINZ. We have handled that.

Mr. RAVITCH. You have, indeed.

It doesn't mean that the book is closed. The survival of our mass transportation system, as I have said, is inextricably tied into the survival of New York. So I think the country has an interest in our mass transportation system. I think the country has an interest in the willingness of New York to look to its farepayers and its taxpayers to bear a substantial burden on the cost. I think it is a good precedent for the country at a time of diminishing Federal aid.

Senator HEINZ. Should we look at New York and ignore the taxpayers of Pittsburgh and Philadelphia and Minneapolis and Kansas and so on?

Mr. RAVITCH. No, sir. Sir, I am not up to the task of arguing with you, Senator. I am not saying you are wrong. You asked me a question and I am trying to answer it.

Second, we have had 200 years of history in which the question of free trade has been debated in the United States. And I presume to be no expert on that subject. I merely think it is my responsibility to look at the laws of this country and to abide by them. And if the Congress in its wisdom decided that the interest of the United States was served by barring these kinds of transactions in the future, then obviously we would abide by them.

I am not here to give a personal or institutional view on the trade policy of the U.S. Government. I am here to suggest that we acted properly, and that the only economic consequence of canceling this contract would take a benefit away from the New York taxpayers and transfer it to the Canadian taxpayers, which they haven't asked to do, with no benefit to the U.S. Government or no benefit to the United States, because I have indicated there were substantial other reasons and valid reasons why Budd was not selected as the bidder in this case.

Senator HEINZ. I understand that. I don't really want to put words in your mouth, but you had a lot of words, so I am going to try to condense them.

You do agree that about twice as much American-made components would be in the Budd offer, than in Bombardier. You do agree, notwithstanding some differences, that the Budd Co. offer was cheaper. And you maintain that the reason that you went with the Bombardier offer is, while you don't contend that going with the Budd offer might not have heen better for the United States, that you had to go with the Bombardier offer because that was better for New York City. Isn't that right? And you did not really consider whether—and you are not obligated to consider—it was better for the United States even though it certainly would appear on its face to be better for the United States. Wouldn't you agree?

Mr. RAVITCH. I would like to make one other observation, Senator, and that is to the extent that this financing is provided by the Government of Canada and not by the issuance of bonds by the Metropolitan Transportation Authority of New York, which would be tax exempt, it does reduce the burden on the Federal Treasury because there are less tax exempt securities in the public marketplace.

Senator HEINZ. Now, my last question. You were advised, warned, by many people, including myself—including myself because I called you up to warn you—that the Canadian offer, dependent as it was on subsidized financing, financing below the international arrangement, really constituted an illegal act by the Canadians. Not by you in accepting it, but by the Canadians. Yet, you went along with something you had been warned was, on their part, illegal.

Although you did nothing wrong, are you not condoning an unfair trade practice by doing what you did?

Mr. RAVITCH. Sir, you did call me and advise me of your concern about this and your concern about the impact on U.S. jobs. And we had a lengthy conversation on the subject, and I respect your point of view.

I do not think that we are condoning anything illegal. I was advised by counsel that there is nothing illegal about this.

Senator HEINZ. I agree with that.

Mr. RAVITCH. And I was advised by general counsel of the U.S. Trade Representative prior to my phone conversation with you that the U.S. Government would take no unilateral action with respect to that. So it hardly, after that phone conversation, would have been proper for me to infer that I was involved in an illegal act.

Senator HEINZ. No. I made very clear I think in my statement, Mr. Ravitch—and you are a skilled witness, and I compliment you on it—I said in my statement that you did nothing illegal. I just asked if you didn't think that, in retrospect, by going along with this that you were condoning someone else's illegal trade practice?

Mr. RAVITCH. I do not, sir.

Senator HEINZ. All right.

Mr. RAVITCH. I was aware only of the political risk that safe harbor could be adversely amended as a result of this.

Senator HEINZ. One final question. What will you do if, under section 912, the Eximbank meets the Canadian financing offer? Will you change your decision?

Mr. RAVITCH. We will certainly examine the issue. As I have testified to, there are many factors that influenced our judgment here. And we will look into the facts and we will make our decision accordingly.

Senator HEINZ. Mr. Ravitch, you clearly are a very able man. You have made a great witness and I appreciate your answers to all my questions.

Mr. RAVITCH. Thank you, Senator.

The CHAIRMAN. Mr. Martin?

Mr. MARTIN. Very briefly. You know, I am a native New Yorker and very proud of it. And I appreciate that you carry 33 percent of the mass transit in the Nation. Unfortunately, your nearest station to me is some 250 miles. And a station of the Ottawa Mass Transit System is about 60 miles from me. Montreal's is only 132 miles away. And from some of the testimony here and the questions you would think that you were talking about dealing with the Soviet Union or whatever, and not a corporation that has significant ties to the State of New York.

And with respect to questions as to the component parts and whether cheapest is always best, and while you make requests for brakes from the Air Brake in Watertown, N.Y., 30 miles from the Canadian border, I think that you have been through the wringer on that any number of occasions. And while you are probably 250 miles from my nearest constituent, through our conference and our delegation I have seen you put through the wringer publicly and privately as to these decisions, and you have come out very well, sir.

Senator Dole spoke about our being in your position. Frankly, I wouldn't have your job. And I know it is a tremendous challenge

and you have done, I think, a great job. And I think that while we are not here to deal with the specifics of this foreign contract, just general trade policy, those who are interested can interrogate you at great length and you could certainly justify the decision that you made. And I salute you, sir, for the job you do.

Mr. RAVITCH. Thank you, Congressman.

The CHAIRMAN. Mr. Ravitch, I would only say with reference to safe-harbor leasing, it is an area of some interest in the Congress. And at last count there were 45 different options being prepared on safe-harbor leasing. And, obviously, we will be looking at one that we think is not particularly efficient. And that is the one involving public transit as well as transfer of deductions to the private sector.

There has been no decision made. There has been a lot of lobbying I understand going on on the leasing because it is a big, big item, around $25 to $30 billion. That does interest a lot of people. And I would hope that we can make modifications that will reserve some good portions of the leasing program. I cannot comment beyond that.

We know of your interest. We know about 25 percent of this total package was made up of tax expenditures, leasing. And that is not a very efficient way to, I might add, according to the GAO, to finance such a project. But in any event, those are areas of certainly concern of yours and a concern of ours.

With reference to the other questions raised, I think you have certainly made a good case. But there are broader questions, and obviously if there are changes in policy we certainly will have your cooperation. I don't think anybody can question that at all.

Mr. LUNDINE. Mr. Chairman, may I ask a question?

The CHAIRMAN. Oh, I thought you were going to testify later.

Mr. LUNDINE. I am.

The CHAIRMAN. If you do it briefly, as we have other witnesses to testify.

Mr. LUNDINE. Yes, sir.

Have you ever directly or indirectly encouraged any bidder to outsource for supply of component parts of these cars so that they could get favorable foreign financing terms?

Mr. RAVITCH. Congressman, in my effort to assist the Budd Co. to make a competitive proposal I advised them of the fact that the French and Canadian Governments were providing financing. And in light of the decision of their sole stockholder to provide no credit to this transaction, the Budd Co. made a decision to try to buy as many components as they could to get financing so that their proposal could be as competitive.

Mr. LUNDINE. So the answer is yes.

Mr. RAVITCH. The answer is yes and properly so.

Mr. LUNDINE. A second question. Did you not insist on an indemnification agreement for the MTA so that if this was held to be in violation of the U.S. trade laws you would be indemnified?

Mr. RAVITCH. Yes, sir, we did.

Mr. LUNDINE. So you were unaware that there were questions about legality.

Mr. RAVITCH. I didn't say I was, sir. I said that I was aware of the issue when I received the call from Mr. deKieffer.

Mr. LUNDINE. Well, there has been a lot of talk here about being aware or being confident of the legality.

Mr. RAVITCH. Well, if I may tell you the facts, Congressman.

Mr. LUNDINE. I think that you have answered the question. And the chairman wants us to be brief. I have only one other question.

Mr. RAVITCH. May I have permission to answer your question?

Mr. LUNDINE. I thought you did.

Mr. RAVITCH. We were aware of the issue. We made the business judgment that there was no chance of, real chance of a finding of injury or of subsidy. But there was a theoretical possibility that if there was a plaintiff, and action brought, there might be such a finding. And I concluded that it was not in the interest of the public in New York to take a risk—it was a theoretical risk and a small risk—and the Canadian company was prepared to take that. And, therefore, under those circumstances they indemnified us.

At that time nobody contemplated the possibility, in light of Mr. deKieffer's call and statement to us and statement to the Canadian Government, that the administration might be reconsidering that policy which we heard for the first time today, sir.

Mr. LUNDINE. One final question.

You testified, I believe, that Hornell had no experience in transit cars. I find that unbelievable.

Are you aware that since 1910 transit and railroad cars have been built, repaired, modernized in Hornell, N.Y.?

Are you aware that the MTA until yesterday had contracts with the General Electric Co. in Hornell to refurbish transit cars? And are you aware that the Budd Co. had a lease with the Hornell Industrial Development Agency and that the agency had provided evidence of the skills of workers available there to do that work?

Mr. RAVITCH. Congressman, I am aware of the fact, obviously, because I signed the contracts, that FL-9 engines are being rehabilitated in this facility. I know it was an old GE rail facility. But there is no work force in Hornell that has built subway cars and that is the critical question.

I am not saying they couldn't do it. All I am saying is the fact that they have had no experience at doing it, it is in my business judgment a proper question for us to take into account in letting this contract.

Mr. LUNDINE. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Lundine.

I might just ask, did you include in your price calculations the cost of any additional duties or retaliatory measures taken under our trade laws?

Mr. RAVITCH. No, sir.

The CHAIRMAN. That wasn't a consideration?

Mr. RAVITCH. No. Only there was, as the Congressman properly pointed out, an indemnification by the contractor in the event there were any additional duties.

I think there are certain basic duties, obviously, that are reflected in the contract price. I am not familiar with the amount. It is not broken out in their proposal.

The CHAIRMAN. Well, again, I thank you very much for your excellent testimony. And we will probably see you again. [Laughter.]

Mr. RAVITCH. Thank you very much, Mr. Chairman, for your courtesy.

The CHAIRMAN. I mean in New York. [Laughter.]

Our next panel is John Doane, treasurer; Thomas Davenport, counsel; Paul Sichert, vice president of the Budd Co., Troy, Mich.

Mr. Doane, I might indicate that within a few minutes I may be required to leave, and Senator Heinz has agreed to chair the hearings. And we appreciate very much your willingness to stand aside for other panels. Thank you very much.

Mr. DOANE. You are very welcome. And I will be very brief. I can assure you.

STATEMENT OF JOHN P. DOANE, TREASURER, THE BUDD CO., TROY, MICH.

Mr. DOANE. Mr. Chairman, members of the committee, ladies and gentlemen, my name is John Doane and I am the Treasurer of the Budd Co.

I am here today accompanied by Mr. Paul Sichert, our vice president for public affairs, and Mr. Thomas Davenport, our corporate counsel, to represent the passenger rail car manufacturing industry in the United States, of which my company is only a part. We would also like to thank you very much for the opportunity to appear at this hearing.

The matter at issue is the pending award by the New York State Metropolitan Transportation Authority of a contract for 825 subway cars for the New York City Rapid Transit Authority to a Canadian firm, Bombardier, Inc.

In our opinion, this contract is going to be awarded to Bombardier because of a predatory, noncompetitive financing package offered by the Export Development Corp. of Canada, an agency of the Canadian Government, unless the U.S. Government takes appropriate action under our laws to help the U.S. industry.

In support of this conclusion I would like to offer the following facts with respect to the Bombardier and the Budd proposals.

The Canadians' base price for the cars is approximately $803,000, U.S., or a total of approximately $663,000,000 U.S.

Budd's base price is approximately $771,000, U.S., per car, or a total of $636 million.

Budd's price advantage, therefore, as we see it, is approximately $33,000 a car, or a total of almost $27 million.

The Canadians propose to deliver the first 10 subway cars in July 1984 and to complete delivery of 825 cars by May 1987. The comparable dates for Budd are January 1984 and October 1986. Budd's delivery schedule, therefore, appears to be approximately 6 months faster.

The Canadian proposal includes U.S. content of 40 to 45 percent of the total.

I would like to digress at this point because there are some differences in the figures which have already been presented from the figures which I am going to use. I think we do not have access to all the information that Mr. Ravitch does, but we do have some disagreement—and I think it is a friendly disagreement—we just

haven't compared notes on how some of these percentages are calculated.

Budd's proposal, according to our calculations, includes a contribution of 80 percent of the total content by the U.S. car building industry.

MTA has reported that Bombardier's proposal includes components sourced in the State of New York equivalent to 15 to 20 percent of the total.

MTA has indicated specifically, I believe, that these components would include airbrakes and motor system components in the case of Bombardier.

Budd's New York State content, including airbrakes and miscellaneous components, assembly costs and equipment investments at Hornell, N.Y., would amount to approximately 19.2 percent.

Budd's offer did not include New York sourcing of motor system components because MTA repeatedly indicated during the negotiations that Budd's proposal was suffering, according to the analysis that MTA employed, from insufficient financing.

Budd therefore elected to source these components in Brazil where attractive financing was available for MTA. In the absence of the request for such financing, additional U.S. and New York State content of 8.6 percent could have been added to Budd's proposal at no increase in price. This would increase the U.S. industry's content to about 88.6 percent and the New York State content to 27.8 percent.

MTA indicated earlier in the negotiations that a major factor in its award would be the availability of low cost, long-term financing for the subway cars.

Bombardier's proposal is supported by a buyer's credit from the Export Development Corporation of Canada equal to 85 percent of its total proposal, including the U.S. content, or approximately U.S. dollars, $563 million, at an interest rate of 9.7 percent, and repayable over a 10½-year period after the last car deliveries, with a final maturity in 1997.

In response to MTA's request, Budd developed buyer's credits from Brazil and from Portugal for U.S. dollars, $111 million, at a weighted average interest rate of 9.2 percent, and repayable over a 9½-year period after the final car deliveries.

Bomhardier thus arranged, with the assistance of the Canadian Government, financing equal to five times the value of Budd's credits, thereby gaining a tremendous advantage in the MTA bid analysis.

In fact, based upon the foregoing, Budd has the advantage in price, in delivery, in U.S. content, and in New York State content. Obviously, in the eyes of MTA, Budd's and the U.S. industry's advantages were outweighed by the Canadian bidder's advantage in financing.

Budd and the U.S. car building industry, therefore, conclude that qualified U.S. suppliers may lose this order because we lack access to financing comparable to that offered by the Canadian Government.

Furthermore, we understand that, on its face, the Export Development Corporation of Canada's financing does deviate from the standstill agreement, to which both the Export-Import Bank of the

United States and the Export Development Corporation of Canada are parties, in that the 9.7-percent interest rate is below the 11¼-percent floor established in that agreement, and that the 10½-year repayment term exceeds the established 8½-year maximum.

Under section 1912 of the Export-Import Bank Act, assistance for the U.S. industry may be available in this case through the provision of matching finances by the Eximbank following the proper determination under the statute by the Secretary of the Treasury.

In addition, we understand that the Export Development Corporation of Canada's below market interest rate of 9.7 percent should constitute an unfair trade practice, and should therefore require the imposition, following appropriate administrative procedures, of a countervailing duty under title VII of the Tariff Act of 1930, as amended.

These protections, which may be available to the U.S. industry from the Treasury and Commerce Departments, International Trade Commission, and the Eximbank, will require some time to be implemented. Budd, on behalf of the U.S. car building industry, therefore earnestly requests that this committee and its members offer their expeditious assistance so that the Departments, and the Commission, and the Bank can respond promptly to this situation.

The announcement of these hearings also requested testimony on the subject of the possible sale of tax benefits related to these 825 subway cars under the safe harbor leasing rules.

I will be happy to respond to questions on this subject, but believe the direct testimony is better left to other witnesses here.

Thank you very much.

The CHAIRMAN. Thank you very much, Mr. Doane.

Did other members of the panel wish to make a statement or do you want to respond to questions?

Mr. DOANE. We will respond to questions, sir.

The CHAIRMAN. You will respond. All right.

And I might say that Congressman Lundine has been waiting. Do you want to make a statement now, Stan, or ask questions?

Mr. LUDINE. I would like to make a statement at some point, Mr. Chairman. I don't care when.

The CHAIRMAN. All right. If you are not rushed for time, we will proceed. And Senator Riegle has joined us.

Did I understand—and maybe it is in your statement—what the difference in cost the financing made? I mean, how much did that disadvantage the Budd Co.?

Mr. DOANE. Mr. Chairman, there is no way that we can know that. MTA used—properly used, I may say—a very complex bid evaluation procedure. We simply are not party to the results of their analysis.

I believe it is a very fair statement to say that the Canadian financing package carried a tremendous weight in their analysis procedure, as I testified. I don't know how much it was worth though, basically.

The CHAIRMAN. Congressman Rangel?

Mr. RANGEL. I just want to congratulate Mr. Doane. We have had so much heat involved and controversy involved in this specific transaction, and I have never heard a fair evaluation as to the superiority of the, or indeed the quality of the Budd bid and its abili-

ty to perform, and to recognize it was the Canadian Government who put together a financing package that the residents and taxpayers of the city and State of New York were the beneficiaries. And I think that is so consistent with the testimony of Mr. Ravitch, and certainly with the Chair and this committee, that we have to review those financing policies to make certain that our firms and our workers are not disadvantaged.

And I just want to compliment you for your professional ability to take the emotion out of your presentation.

Mr. DOANE. Thank you.

[The prepared statement of Mr. Doane follows:]

STATEMENT OF JOHN P. DOANE, TREASURER, THE BUDD COMPANY

BEFORE THE

FINANCE COMMITTEE OF THE UNITED STATES SENATE

May 28, 1982

Mr. Chairman, Members of the Committee, Ladies and Gentlemen:

My name is John P. Doane and I am the Treasurer of The Budd Company. I am here today, accompanied by P. O. Sichert, Vice-President, Public Affairs, and T. I. Davenport, Corporate Counsel of the Budd Company, to represent the passenger railcar manufacturing industry in the United States, of which industry my company is only a part. The matter at issue is the pending award by the New York State Metropolitan Transportation Authority of a contract for 825 subway cars for the New York City Rapid Transit Authority to a Canadian firm, Bombardier, Inc. In our opinion, this contract is going to be awarded to Bombardier because of a predatory, non-competitive financing package offered by the Export Development Corporation of Canada, an agency of the Canadian Government, unless the United States Government takes appropriate action under our laws to help the U.S. industry. In support of this conclusion, I would like to offer the following facts with respect to the Bombardier and Budd proposals.

The Canadians' base price for the cars is U.S. $803,485 per car, or a total of U.S. $662,875,125. Budd's base price is U.S. $770,768 per car, or a total of U.S. $635,883,600.

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Budd's price advantage, therefore, is $32,717 per car, or a total of $26,991,525.

Thr Canadians propose to deliver the first 10 subway cars in July, 1984 and to complete deliveries of the 825 cars by May, 1987. The comparable dates for Budd are January, 1984 and October, 1986. Budd's delivery schedule, therefore, appears to be about 6 months faster.

The Canadian proposal includes U.S. content of 40 to 45% of the total. Budd's proposal includes a contribution of 80% of the total content by the U.S. carbuilding industry.

MTA has reported that Bombardier's proposal includes components sourced in the State of New York equivalent to 15-20% of the total. MTA has indicated specifically that these components would include air brakes and motor system components in the case of Bombardier. Budd's New York State content, including air brakes and miscellaneous components, assembly costs and equipment at Hornell, New York would amount to 19.2%.

Budd's offer did not include New York sourcing of motor system components because MTA repeatedly indicated during the negotiations that Budd's proposal was suffering, according to the analysis MTA employed, from insufficient financing. Budd therefore elected to source these components in Brazil where attractive financing was available for MTA. In the absence of the request for such financing, additional

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U.S. and New York State content of 8.6% could have been added to Budd's proposal at no increase in price. This would increase the U.S. industry's content to 88.6% and the New York State content to 27.8%.

MTA indicated early in the negotiations that a major factor in its award would be the availability of low-cost, long-term financing for the subway cars. Bombardier's proposal is supported by a buyer's credit from the Export Development Corporation of Canada equal to 85% of its total proposal - including U.S. content - or U.S. $563,443,858, at an interest rate of 9.7% and repayable over a 10 1/2 year period after the last car deliveries, with a final maturity in 1997. In response to MTA's request, Budd developed buyer's credits from Brazil and Portugal for U.S. $111,103,905 at a weighted average rate of 9.2% and repayable over a 9 1/2 year period after the final car deliveries. Bombardier thus arranged, with the assistnace of the Canadian Government, financing equal to five times the value of Budd's credits, thereby gaining a tremendous advantage in the MTA bid analysis.

In fact, based on the foregoing, Budd has the advantage in price, in delivery, in U.S. content, and in New York State content. Obviously, in the eyes of MTA, Budd and the U.S. industry advantages were outweighed by the Canadian bidder's advantage in financing.

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Budd and the U.S. carbuilding industry therefore conclude that qualified U.S. suppliers may lose this order because we lack access to financing comparable to that offered by the Canadian Government. Furthermore, we understand that, on its face, the Export Development Corporation of Canada's financing deviates from the existing "Standstill Agreement" to which both the Export-Import Bank of the United States and the Export Development Corporation of Canada are parties in that the 9.7% interest rate is below the 11 1/4% floor established in that Agreement and that the 10 1/2 year repayment term exceeds the established 8 1/2 year maximum. Under Section 1912 of the Export-Import Bank Act, assistance for the U.S. industry may be available in this case through the provision of matching finances by the Eximbank following the proper determination under the Statute by the Secretary of the Treasury.

In addition, we understand that the Export Development Corporation of Canada's below-market interest rate of 9.7% should constitute án unfair trade practice and should therefore require the imposition - following appropriate administrative procedures - of a countervailing duty under Title VII of the Tariff Act of 1930, as amended.

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These protections,which may be available to the U.S. industry from the Treasury and Commerce Departments, from the International Trade Commission, and from the Eximbank, will require some time to be implemented. Budd, on behalf of the U.S. carbuilding industry, therefore earnestly requests that this Committee and its Members offer their expeditious assistance so that the Departments, the Commission, and the Bank can respond promptly to this situation.

The announcement of these Hearings also requested testimony on the subject of the possible sale of tax benefits related to these 825 subway cars under the Safe Harbour Leasing Rules. I will be happy to respond to questions on this subject, but believe direct testimony is better left to other witnesses here.

Thank you.

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The CHAIRMAN. I think, as Congressman Rangel mentioned, I assume if we were all in Mr. Ravitch's position we would look for the best possible deal, otherwise we might be out of work. So there is no question as far as the evidence today that anyone would disagree with what he did. But there is the broader question which you are, of course, concerned with, as are others—principally on this committee it has been a concern of Senator Heinz, and he has agreed to chair the balance of these hearings, and I appreciate very much your testimony—we are not trying to make a decision on who is right and who is wrong. We are concerned about American jobs, about American policy, about predatory credit practices, and we are going to encourage the administration to be very firm because, in fact, if this proves to be a case that is very visible, and nothing is done, then I believe that we are going to be in trouble all over, whether it be my State, or Pennsylvania, or maybe New York in another situation, in a reverse situation. There probably are some of those hanging around.

It is our hope that these hearings might impress upon the administration, as well as the principals involved, that we don't have any quarrel with anyone seeking the business. We do have a quarrel with a policy that permits some less economically viable package to be sold because of some subsidy, whether it is a credit subsidy or whether it is some other direct subsidy. That is a matter of great concern to this committee.

I am pleased that Mr. McNamar and others have indicated that it is a concern of this administration.

Having said that, I thank you. And I would ask Senator Heinz if he would be willing to chair the hearing.

Senator HEINZ. Certainly, Mr. Chairman.

Senator Riegle?

STATEMENT OF HON. DONALD W. RIEGLE, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator RIEGLE. Thank you, Senator Heinz, Mr. Chairman. I wanted to follow on with a comment that we were involved in earlier today, and state for the record the fact that both you and I serve on the Senate Banking Committee together where you have both authority over the Eximbank, and, for that matter, mass transit money as well.

What concerns me here, and I don't know whether it was discussed earlier or not, is the fact that when we are providing operating subsidy money as apart from capital investment money for rolling stock, but nevertheless it all goes through the same income statement finally in terms of being able to operate the mass transit systems, I think it is going to be very difficult for those of us who supported mass transit in the past from across the country to be able to continue to marshall the public support for that assistance, and especially in the Northeastern part of the country where a large part of that money is spent, if, at the same time, we are seeing a pattern develop where the jobs are being taken out of this country and sent abroad in terms of acquiring a capital stock in the form of subway cars or things like this.

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And what is happening here, I think clearly, is that foreign countries are exporting their unemployment, and they are exporting it to the United States and they are doing it very skillfully through the use of credit practices. But in the end, it is a kind of predatory competitive pattern that we are seeing here.

And I would just say, as one who has supported the need for mass transit operating assistance to cities like New York City, that I am not sure that we are going to be able to hold a public consensus for continuing that pattern of assistance if at the same time we are losing our tax base back in our States, like Michigan, because, on the capital side in the transit authorities, these contracts are going to foreign suppliers and foreign workers. We are just not going to be able to have the money, for one thing. Plus, I think the public support, the political support that is necessary, will also begin to diminish sharply. And I don't think these two issues can be separated.

And so I would say to the transit authority people, that may still be in the room, that they cannot divide these two issues. I think they have to think in terms of how they make their investments for rolling stock and its implications for the national economy of the United States, and, at the same time, consider the issue of how they maintain broad support across the country for the kind of operating assistance that they come forward and ask for, and need, and expect, and get, because these two have to run together. There will not be a way over the longer term to separate these two issues and expect that we are going to be able to continue to provide national help for transit systems in big cities if there isn't some consideration given at the same time on the capital side to making sure that we are keeping jobs here in the United States. And that really is the fundamental issue.

And these predatory credit practices that we are seeing now from Japan and Canada and from other countries are practices that we must not allow to continue. They have to be met head on forcefully by one means or another. And whether this means the Export-Import Bank has to use the provision that Senator Heinz referred to earlier, and which he was instrumental in putting into the law to see to it that we have an equivalent financial opportunity to meet these predatory practices, or whether it is done in some other form, I think it is essential that we take this as a critical test case. I don't think we can let this case just slide on by. I think this draws the issue as thoroughly as any case we might find, and I think it is essential that the administration and the Congress force this issue to a conclusion.

I think what are at stake here are jobs in this country and our own long-term economic health.

I must say it is very frustrating when I see the ratio of defense spending and I see the extent to which we not only pay for the U.S. share of free world defense spending but for most of the share of Japan and other nations. And we are running out of money. And at the same time then we are dealing with predatory trade practices coming back the other way, which are stripping us bare, and leaving us in a position with massive deficits so we cannot finance anything, let alone big increases in the free world defense budget.

So we have got to have some equity in these trade relationships. These issues have not been faced squarely in the past, and, as a result, we have gotten ourselves in more and more trouble. And when I look at States like Pennsylvania, or States like Michigan where our steel workers are unemployed, our iron ore workers are unemployed, the other manufacturing concerns are operating at maybe 50 percent of capacity, or less, because of the massive layoffs, it is obvious that the time has come to meet this problem head on.

And I just want to give the representatives who were here from the Budd Co. and others who were in the room the assurance that in the Banking Committee we are going to take this issue up directly in every avenue that is open to us, as well as through all of the appropriate channels within the Reagan administration, and within all of the trade agencies that we have within the Government, because this is a case that has to be taken and treated as a major national policy issue. And I am determined to do everything I can with my colleagues here to see to it that we keep these jobs in the United States because it is the basis for carrying out all of our other commitments to our own people and around the world.

I thank the Chairman.

Mr. RANGEL. Would the Senator yield?

Senator RIEGLE. Yes.

Mr. RANGEL. Would that inquiry include our acquisition of defense equipment in overseas purchases?

Senator RIEGLE. Absolutely.

Mr. RANGEL. I just want to support you in that effort.

Senator RIEGLE. I think the gentleman makes a key point. We have been drifting in that area as well where more and more critical items are coming in from abroad.

We may find ourselves, unless we act aggressively to protect and restore our industrial base and bring it up to the state of the art conditions, we may find ourselves in the future, and if a mobilization arises, having to order our trucks and our other major items from other countries, from Japan, from Korea, and so forth. That is clearly an unacceptable situation. But the drift of policy is taking us that way, and this case lays it out clearly.

Senator HEINZ. Thank you, Senator Riegle. Before I yield to my two other congressional colleagues, Congressman Martin and Congressman Lundine, there is something I would like to clear up for the record.

Is Don deKieffer still here?

Mr. DEKIEFFER. Yes, sir.

Senator HEINZ. Mr. deKieffer, Mr. Ravitch, when he was summarizing his testimony, he made the rather remarkable statement—I jotted it down—but he had talked to you some 3 weeks ago, and that in the course of that conversation you indicated that the U.S. Government would take no unilateral action involving the issue of the award of contracts or involving the financing and he made it sound as if the U.S. Government really didn't give a darn in what was happening. And he used that to suggest that, therefore, there was nothing that he was doing that could cause any action to be taken by you under any circumstances.

Did you really say that?

Mr. DEKIEFFER. Not quite, Mr. Chairman. Let me give you a little bit of a background very quickly as to the reason for my telephone call to Mr. Ravitch about 3 weeks ago. He was correct that I did make such a telephone call. A week prior to that telephone call I had been in Geneva, and during that time I had discussions with various representatives of our trading partners, including France. They indicated to me in rather uncertain terms that they regarded these export credit subsidies as not to be countervailable at all under U.S. law as long as they were consistent with item K of the illustrative list, which I mentioned in my testimony this morning.

Now, we had a rather bitter debate in Geneva with regard to the ability of the United States to countervail. They claim—they, being some of our trading partners—claimed that the United States agreed during the multilateral trade negotiations that we could not countervail.

Second, the other bit of information that I was given was that this view had been given to MTA—in other words, the U.S. Government was somehow barred from taking action—and, second, that the Metropolitan Transit Authority could insulate itself from the incidents of any countervailing duty action if it were taken by putting into its contracts a hold harmless clause. In other words, the supplier would absorb the amount of the countervailing duties.

Upon hearing that, and upon hearing that these views had been communicated to MTA as both the law of the United States and the policy of this administration, I thought it was incumbent upon administration officials—and I was the one here at the time after talking to some of the people in the administration—that indeed MTA had been given this impression: that we correct that impression immediately.

I, therefore, called Mr. Ravitch and told him that if MTA or anybody else in New York was under the impression communicated already to them by the French that our Government was powerless to act in the case of subsidized export credits because of some purported agreement that we had made back in 1979; that they should be disabused of that immediately.

Second, I emphasized to Mr. Ravitch that any agreement that they might be putting into any of their contracts, so-called hold harmless clauses—in other words that the city of New York, or MTA, would be protected from rebates—was not in conformity with U.S. law.

And Mr. Ravitch is correct in suggesting that I said that at that time. I said I am not threatening you; I am not threatening MTA. Certainly MTA has the ability to buy from whomever they choose.

And I emphasized to him this was not a so-called buy America call. I was merely calling him to inform him of the fact that contrary to the information that he had apparently—he or MTA—recede to that point, that the U.S. Government would be perfectly within its international obligations to take whatever action was necessary.

Senator HEINZ. Including unilateral action.

Mr. DEKIEFFER. Including unilateral action. I made it clear to him at that point that no contracts had been let at that time. They were still in a negotiation stage. And I said certainly, the U.S. Gov-

ernment is not today going to take any unilateral action. You haven't done anything.

As a matter of fact, as of even today, it is our understanding that no definitive and final action has been taken either by Canada or by MTA. So certainly the U.S. Government is not going to take any unilateral action unless there is some kind of act against which we should move.

Senator HEINZ. But you don't rule out taking unilateral action, do you?

Mr. DEKIEFFER. Certainly. As I mentioned in my testimony this morning, the United States can take unilateral action consistent with any of its international obligations. But, obviously, we are not going to take unilateral action unless Canada or MTA or someone does something that is in violation of their international positions or ours.

Senator HEINZ. I think you have clarified the record. Obviously, there was a misunderstanding. And we can see how somebody listening on one end of the phone could hear something a little different than what was put in. It happens all the time, unfortunately. That is human nature. We hear what we want to hear.

Mr. DEKIEFFER. Mr. Chairman, I would suggest to the committee that there was an article that appeared in the New York Times about 2 days—well, about 1 week following, and I don't know all the sources of this information, but it was in the New York Times, on page B–2, on the 18th. And it says that "MTA warned of penalty for hiring foreign bidder." I am not sure if that captures exactly the tone of the conversation, but I think it probably is a little closer to at least the intent of my conversation.

Senator HEINZ. We will put you down as endorsing the accuracy of the New York Times. [Laughter.]

Mr. DEKIEFFER. God forbid.

Senator HEINZ. Thank you very much, Don. Before I turn it over to Congressman Martin, I just want to ask the Budd people how many man-hours for U.S. workers would this contract have meant if awarded to Budd? Could you answer that?

Mr. SICHERT. We will. But before we say that, we would like to emphasize that we have been building railcars since 1934, in Philadelphia, and have built over 10,000 of them in that particular plant.

I also want to commend Senator Riegle. Many of those people who were producing railcars in that plant in Philadelphia today are, in fact, retrained autoworkers, people who have been displaced out of the automotive industry that we have trained into another skill to produce railway passenger cars.

Thank you

Senator HEINZ. Could one of you answer the question, how many man-hours for U.S. workers this contract would have meant if awarded to Budd?

Mr. DOANE. Certainly. The best estimate that I have is, frankly, an estimate that was made by the AFL–CIO and communicated to Senator Dole, as chairman of this committee.

They estimated that the figure would be 25,700 man-years of work.

Senator HEINZ. That is 27,000 man-years?

Mr. DOANE. 25,700 man-years of work. You can multiply it by about 2,000 to get it in hours.

Senator HEINZ. So it is safe to say, since Budd has about twice the U.S. content of the Bombardier bid, that we are going to lose about half of that; about 14,000 man-years of work is going to go overseas or across the border. Is that about right?

Mr. DOANE. I think you could draw that conclusion, yes, sir.

Senator RIEGLE. Would the Senator yield just for one additional point on that question?

Senator HEINZ. I would be happy to yield.

Senator RIEGLE. I am wondering if we could ask the witnesses to try to do an estimate of what that would convert to in the way of tax dollars paid in to the Federal Government. In other words, if those hours of work by those men and women were not lost, could we convert that to a dollar figure that would impact tax revenues coming in to the Government and, in effect, right down to the bottom line in terms of the Federal deficit?

I would assume that they are probably some number of millions of dollars of tax revenue being lost to this Government at a time when we desparately need it because these jobs are being lost and these man- and women-hours are being lost.

Mr. SICHERT. We understand, sir, that from the Congressional Research Service that for every $1,000 of foreign procurement, approximately $552 are lost in taxes of city, State, local, and Federal. For every $1,000 of foreign procurement, approximately $552 are lost in taxes of various types.

Senator RIEGLE. How would that convert? If you take $25,000 in 10 years, what does that convert to?

Senator HEINZ. Well, without going into the math, let me do it a simpler way. The President himself has estimated that each percentage point of unemployment, 1 million people, cost the Treasury about $25 million; 14,000 people is one-seventieth of 1 million people. One-seventieth of $25 billion is, according to my rough calculation, a $350 million effect on the deficit, unless I have dropped a zero some place.

Mr. DOANE. I cannot guarantee your math, Senator. [Laughter.]

Senator HEINZ. And I have trouble with my 12-year-old son. So we are all even.

My last question, becauee I want to give Congressmen Martin and Lundine a chance, is just this. The Canadian Export Development Corporation is reported to have guaranteed Bombardier that it would beat any competing financing deal.

Now, if that is Canadian Government policy, how could Budd or anybody else in this country ever expect to compete successfully for a major U.S. contract?

Mr. DOANE. Providing that, obviously, the financing was a criteria upon which the award of the contract would be based, I can see no way that we could compete, Senator.

Senator HEINZ. I would agree with you. And I thank you, gentlemen.

Congressman Martin?

Mr. MARTIN. I want to thank you, Senator, and I also want to thank the chairman for inviting me to be here. Indeed, I am an invitee. I want to salute the gentleman for his statement. And I em-

brace what Congressman Rangel said about your professionalism in delivering that statement.

In the basic ground rules that were set here, you understand that we are dealing not with the specifics of this particular contract, but with the general overall big picture. Unfortunately, we have gotten down to an awful lot of the specifics back and forth, and as a matter of fact, I think in some people's minds some conclusions have been drawn, whether they be correct or incorrect. I think it is unfortunate because maybe that was not the purpose of this. And that some of the things that we're going into would be more appropriately held for what I understand might be something in the general jurisdiction of the Treasury, pursuant to law.

No one here is condoning any breach of law one way or the other.

I would like to make the point, and I don't know where the list of invitees for this hearing came from, but I think in just fundamental fairness and given that we know how long—and I salute you for pursuing this contract with vigor; that is what it is all about, and you certainly are doing that—and to the other people who are affected, and the other jobs and the other companies, I think their other arguments that I think in all fairness should be heard. And perhaps at some future time those arguments might be presented here.

But getting back to the general picture, which is the sole purpose, as I understand it, of this hearing, I wonder if you could tell me, sir, what is the effect of the subsidized export credits from Portugal and Brazil on your bid for this particular contract? Does that have the effect of making you more competitive or less competitive? And maybe you could draw the contrast, other than in amounts or percentages, in your financing as to what effect that had on your contract.

Mr. DOANE. I don't believe that there is any question at all that the fact that Budd was able to arrange for the export financing from Portugal and Brazil made our bid more competitive in the eyes of the MTA.

I would go on to say, as I think was covered in the prepared text, that I think that the advantage was still with Bombardier because they had a package that was five times bigger, basically.

Mr. MARTIN. But it is the same kind of thing. It is just difference in proportion. That is pretty much conceded. Is that correct?

Mr. DOANE. Yes, sir.

Mr. MARTIN. I don't think that I have a copy of the gentleman's prepared statement.

Mr. LUNDINE. Would the gentleman yield?

Mr. MARTIN. Yes; I yield.

Mr. LUNDINE. On that, I just would like to ask one followup on that point. However, is it not a fact that the financing from Brazil and Portugal, to the best of your knowledge, are not contrary to their trade agreements with the United States?

Mr. DOANE. To the best of my knowledge, yes. I might have to except Portugal on that. I am honestly not totally certain what the rules are as far as Portugal is concerned. Brazil, being a less developed country, I don't believe there is any problem with their package.

Senator HEINZ. Mr. Riegle?

Senator RIEGLE. I think it is so important to note here that the Budd Co. was offering a lower price per unit. They were offering faster delivery dates. They were offering more U.S. content by far, in terms of the labor effort. They were offering more New York State job content by far, and with even an ability to increase that, depending upon how things were finally worked out.

In every critical respect, the Budd offer was a measurably better proposal for the transit authority and for this country. And it was only at the point where the international financing gimmick comes into the picture that this equation turns the other way.

And it seems to me clearly that what is being done here with that financing proposal is that it violates the rules of the game. It is a clear violation, both in terms of the extent of the subsidy and in stretching the time period over which it would extend.

And so I think we have here a clear-cut case of the United States being taken advantage of and in ways that injure our national interest. There is no net gain to be had from this, and particularly in light of what has been said, the calculations of the Senator from Pennsylvania when he notes that we are looking at a loss to the Treasury here in the end of something on the order of perhaps a third of a billion dollars, in addition to all of the work that would also be lost here in the United States.

So I think we have to pursue this aggressively. I think that unless we settle this case, we are going to find ourselves opening a door to exploitation on a wholesale basis. And so I think this is as clear a case to draw the line on as any I could imagine.

Mr. MARTIN. Senator, would you yield briefly to a question? And perhaps I misunderstood you.

Senator RIEGLE. Yes.

Mr. MARTIN. From what you have in front of you, and from the testimony that you have heard today, do I understand that it is your position that you conclude that every aspect of the bidding process as between these folks and the Bombardier Corp., from whom we haven't heard, that you are satisfied, based on what you have heard, that in every aspect, save for the financing, that this corporation is superior, notwithstanding the months that these gentlemen spent, and their competitors, dealing with the Metropolitan Transit Authority?

Are you willing to draw the conclusion on what you have heard here today, sir, that the only thing that Bombardier had going for them was the financial package?

Senator RIEGLE. That's what the facts on the table today I think make clear.

Mr. MARTIN. I have not talked to them. I do not know—let me say this unequivocally—I do not know one person in Bombardier. I don't know if it is involved in this situation. But I have not heard from them. I don't know. But for my own part, I cannot draw your conclusion. I just cannot draw the same conclusion as the Senator without hearing evidence that Mr. Ravitch was incorrect in some of the judgments that the MTA made. That is not to say he is not incorrect, but I certainly cannot draw a conclusion on the evidence that comes from one side.

Senator RIEGLE. Well, I might just say, finally, to my colleague, and that is that in a situation of this kind, well publicized in advance, the facts known, I think if there were a powerful set of rebuttal arguments, we would not have to wonder about them. They would be here. They would have been presented in one form or another to him, and to me, and to the rest of us.

I think, based on what we do know and what we have been able to ascertain today, this is a clear-cut violation of the national interest of the United States, however one might measure it, and whether in terms of jobs, whether in terms of effect on our Federal deficit, whether on industrial infrastructure, whether on trade fairness. I just hope that we are going to take, as a Congress, an aggressive posture on this, because I think if we can't respond to this kind of a problem, I don't know what kind of problem we can respond to.

Mr. MARTIN. Perhaps the Senator misunderstands me. What I am saying is that no one here is going to condone, God forbid, me, unfair practices as to American producers, or taking jobs from the United States, or from the State of New York, or the State of Vermont. But what I am saying here is that some of the conclusions that were drawn with respect to the Metropolitan Transit Authority and what is the best buy for them and we draw conclusions here in a few minutes testimony—and, of course, we have had some reports from various newspapers, which is certainly evidence that we can take into consideration—are being drawn without evidence from both sides.

Senator HEINZ. Gentlemen, we have one more witness who has been waiting patiently in the wings. Congressman Lundine has been waiting to give his opening statement.

I would like to thank the panel. We appreciate your being here.

Mr. DOANE. Thank you, Senator.

Senator HEINZ. We call as our final witness, Congressman Stan Lundine.

STATEMENT OF HON. STAN LUNDINE, A U.S. CONGRESSMAN FROM THE STATE OF NEW YORK

Mr. LUNDINE. Thank you, Mr. Chairman. I will try to be brief, and I will try not to repeat anything that the Senator from Michigan has said.

The United States is suffering economically, and I believe we are paying a price for our failure to insist that our so-called international trading partners stick to the rules that they have agreed on.

As has been just explained, I cannot think of anything more clear than if the interest rate is lower than international agreements, and the term is longer than international agreements, that there is, in fact, a violation.

It is unfortunate that we have no industrial strategy in the United States. And I, together with Senator Levin, of Michigan, have introduced legislation to create an Industrial Development Board to develop a consensus on an industrial strategy. But even in the absence of that, I think we can insist on the fair implementation of our international trade laws.

A great deal has been said today about competition. The fact is, as has been demonstrated by other witnesses, the Budd Co., the U.S. supplier, offered a lower bid per car. They offered an improved delivery schedule, and they offered a quality product, which is as good or maybe even superior to that offered by Bombardier. Subsidized financing below that agreed to by the OECD nations was the difference.

Now, there are several remedies available, as you well know. And I think that the superior remedy is for the Export-Import Bank to provide competitive financing.

A lot has been said today about subsidies. But why is a subsidy all right if it is a safe-harbor leasing but not all right if it provides direct financing for American jobs in competition with the offer of a foreign government?

The offer of competitive financing would insure that the MTA would secure a lower per unit price for their subway cars. It would provide roughly twice as much U.S. content, and, therefore, twice as many U.S. jobs. And as has been testified to by Budd, it would provide even more New York State jobs. And, after all, there are taxpayers from all over New York State that pay for the MTA. You are closer to that subway stop in New York City right here in Washington than you are in my home town in upstate New York, yet upstate New York taxpayers pay considerably to support the losses of the MTA.

I am not going to talk much about the indemnification feature of this contract, but it does seem odd that the same MTA can come in here and ask for a continuation of safe-harbor leasing, on the one hand, and, on the other hand, ask that they be indemnified if they have violated U.S. trade laws by circumventing those very leasing provisions and going to the more favorable foreign financing scheme.

For all of these reasons, I urge that we support the competitive financing.

Now, you can say I have an axe to grind. I represent Hornell, N.Y. It is a town that, since around the turn of this century, has manufactured, repaired and serviced railroad cars. It has an extraordinary unemployment rate. Conrail pulled out of Hornell shops in 1976. GE just closed the doors there. There are people in Hornell who are skilled in servicing railcars. And, there are a great many who are unemployed. And, yes, I look out for them.

But I didn't come here today just on behalf of Hornell. Whether Vermont gets the jobs, or upstate New York gets the jobs is not the issue. The issue is, are we going to look the other way while our trading competitors violate agreements that they have made with us? Are we going to look the other way while America loses jobs, as has been pointed out: Bombardier has only half of the U.S. content of the Budd proposal?

And I think there are important questions of competitive industrial policy and international trade policy involved in this. I thank the committee very much for allowing me to express that firm conviction.

Senator HEINZ. Congressman Lundine, your statement is very eloquent. You make an excellent case. It is one on which I think the committee finds itself in very substantial agreement with you.

And the only disadvantage you have is you do appear at the end of a long session of witnesses. And just about every conceivable question that any of us could think of asking has already been asked.

Let me ask you, however, one question. Would it be your view, for example, that we should put a requirement on the mass transit legislation that was reported from the Senate Banking Committee about 2 weeks ago, such requirement to read that any mass transit authority, including the MTA, that had reason to know, or knowingly accepted an offer of foreign financing that was at variance with the so-called arrangement, that it should lose eligibility for Federal financing? Would you support that kind of strong approach?

Mr. LUNDINE. Well, what I support is insisting on agreements being kept that have already been made. I do favor international competition, but what we are seeing here is international competition not on a level playing field.

I don't think we can say you can only purchase subway cars from U.S. manufacturers, and then expect that France or Canada or any place else isn't going to do the same thing.

Senator HEINZ. Well, I would agree.

Mr. LUNDINE. In fact, I think we have been more open than other countries have been in that respect. And am proud of our record in that regard. And I don't think we can put somebody like Mr. Ravitch in the position of making the final determination on U.S. trade policy. But I think that when the law is clear that we can expect that they comply with it.

Now, whether to deprive transit authorities of operating subsidies because of a finding of violation is one that I would like to give more thought to because I think the problem is that you get into the trap that maybe a transit authority unwittingly could accept an offer and then later find that——

Senator HEINZ. I would agree with you. You would have to have a very clear standard that involved a knowing violation.

Mr. LUNDINE. Yes. Right.

Senator HEINZ. Had reason to believe, had reason to know.

Mr. LUNDINE. Right. In that case, I would support it.

[The prepared statement of Congressman Stan Lundine follows:]

Statement of Congressman Stan Lundine
before the
Finance Committee of the United States Senate
May 28, 1982

Thank you for the opportunity to appear before you on such short notice. I come before you today to emphasize how critical I believe it is to the economic future of the United States that we fully comprehend the implications that are implicit in the circumstances surrounding the proposed purchase by the Metropolitan Transit Authority of New York of 825 subway cars from a Canadian firm, Bombardier, Inc.

The United States is suffering economically, in part, because we have tacitly allowed many of our international trading partners to capitalize on the use of illegal trade practices and non-tariff barriers to capture international markets.

We are paying the price for our failure to insist that our international trading partners stick to the international rules that are meant to govern an open, but fair trading system. Overall U.S. productivity growth rate has declined sharply in recent years, from a national average growth rate of over 3% between 1948 and 1968 to about half of one per cent average between 1973 to 1980. The erosion of our ability to successfully compete in international markets has impaired the profitability of our industries and handicapped our ability to expand investment in new plant and equipment, in research and development, development of human resources, and other factors that can contribute to a long term industrial strategy to keep this country strong economically.

Unlike all of our major international trading partners, this country currently has no national industrial strategy defining how we are going to remain

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internationally competitive over the long term. I believe we need to develop such a strategy and that is why I have introduced legislation, which has also been introduced in the Senate by Sen. Levin, to create a National Industrial Development Board to be comprised of representatives from government, business, labor, and public interest groups. The challenge to this group would be the development of a consensus on the appropriate industrial priorities for America and a strategy for reinforcing those priorities in international competition.

With or without a consensus on an industrial policy for this country, there is no more important an issue to the implementation of a sound U.S. economic strategy than the proper structuring and fair implementation of our international trade laws. What disturbs me the most about the proposed M.T.A. purchase from Bombardier is that it is a classic case of a foreign government and foreign company collaborating to illegally take advantage of the U.S. market, in this case, a taxpayer supported market, principally because we lack assertiveness in executing international trade policy.

This committee should note that in this competition the Budd Company, the U.S. supplier, offered a lower bid per car than the Canadian firm. They offered a delivery time and quality of product which was as good, and may even be superior to the Canadian firm. The only reason that the M.T.A. proposes to award this contract to Bombardier, the Canadian firm, is because subsidized financing is being offered to the M.T.A. by the Canadian government which is below that agreed to by the OECD nations and far below financing terms available to domestic competition.

This is a clear violation of international trade laws and practices and must not

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be tolerated by this country. I urge this committee to use its prestige and influence to insure that the spirit of fair trade prevails in this instance.

Under the law, there are several remedies available to counteract this subsidized financing. The most palatable, in this instance, I believe, is to take the unusual, but appropriate step under the law to offer competitive financing through our Export-Import Bank to the Budd Company. Section 1912 of Public Law 95-630 authorizes the Secretary of the Treasury to conduct an immediate investigation to determine if non-competitive financing is involved in a foreign export sale. If after requesting the foreign country to withdraw the competitive financing they fail to do so, the Export-Import Bank may provide competitive financing.

I am pleased that the Treasury Department has begun such procedures and would urge your support for exercise of the full force of the law if the Canadians fail to withdraw their financing offer. By doing so, the United States would be demonstrating that we intend to aggressively enforce our trade laws and that we do not intend to look the other way when trade laws are intentionally circumvented by our trading partners. The United States must send a signal to the world that we are not going to have a weak international trade policy.

In addition, the offer of competitive financing by our Export-Import Bank to Budd Company would insure that the M.T.A. would secure their subway cars at a lower unit price than the price which would be attained under the contract with Bombardier. Finally, competitive financing would insure that approximately double the U.S. content would be contained in the M.T.A. cars, and that means U.S. jobs.

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As you can see, I am sympathetic to the goal of the M.T.A to secure these cars at the lowest price. But I am absolutely astonished at the lengths to which the M.T.A. went in the negotiations surrounding this contract to secure below market financing. It is my understanding, for example, that prospective bidders were told to go out and secure foreign content as part of their bid so they would be eligible for foreign financing. I maintain there is something fundamentally wrong with a public official of the largest municipal authority in the country urging foreign content to secure foreign financing.

Moreover, I am deeply disturbed by the duality and improbity involved in including an indemnification feature in a proposed contract with a foreign firm offering subsidized financing. This is clearly contrary to federal trade laws, and would permit the circumvention of our countervailing duty laws in the event that they are applied in this instance. Make no mistake about it, the M.T.A. knew they were violating our international trading laws in proposing this contract, and deliberately acted to build safeguards into the proposed contract to insulate themselves from financial exposure in this regard. Such conduct can not be condoned by the federal government.

I am sympathetic to the position of the M.T.A. in favor of retaining the safe harbor leasing law contained in the 1981 Tax Act for public transit systems. This provision, I believe, has proven effective in providing assistance to public enterprises in a difficult economic environment, and to eliminate it would retard investment in modernization and expansion.

Nevertheless, it is extraordinary duplicity for the M.T.A. to come before Congress to emphasize the importance of retention of a special interest provision in the safe harbor leasing law, while at the same time, seeking to

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avoid utilizing this domestic financing mechanism and, instead, obtaining an indemnification agreement for an illegal foreign financing scheme.

For all of these reasons, I urge your support to insure that competitive financing is provided the Budd company for this sale. This route is preferable to some action under our countervailing duty laws. While application of countervailing duty laws in this instance would be wholly appropriate, it would simply inflate prices.

Ultimately, in coming to a decision about what to do about the proposed M.T.A. purchase, I believe the U.S. must assess our fundamental economic circumstances. And those fundamental economic circumstances include sluggish economic growth, high unemployment, and a declining productivity growth rate which contributes to inflation and high interest rates. As such, we must insist on strict adherence to fair trade and reject illegal subsidized financing for foreign manufacturers.

Obviously, for me, as the Congressman who represents Hornell, New York in Congress, where all of the 825 subway cars would be assembled if Budd is awarded this contract, there is an added interest in adherence to our international trade laws in this instance. Hornell is an old railroad town, which through no fault of its workers or people, has been in decline since Conrail closed the rail repair shop there in 1976. The town is in desperate need of the 600 jobs and the economic stimulus that would be provided through assembly of these cars there, and it provides an excellent climate in which to secure a quality product.

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As such, I can certainly understand the interest of my colleagues from Vermont in wanting these cars to be assembled in their state. But, ultimately, this is not simply a question of whether or not these cars will be assembled in Hornell, New York or Barre, Vermont. It is a question of whether we want to enforce our trade laws, and whether we desire two times the U.S. content and jobs that would be involved in the Budd bid, and whether or not we are concerned about the Budd Company, the last and only producer of subway cars left in the United States. Are we going to ignore unfair trade practices and lay the groundwork for Budd to go the way of Pullman, St. Louis Car, General Electric, Rohr and Boeing, all former U.S. producers of these cars? Ultimately, I think it is a question of whether or not we are concerned that foreign firms may totally capture an international market in passenger cars that may insure that in the future we will end up paying a premium for future supplies of cars when we need them.

I believe we need an industrial policy in this country to address adequately all of these questions that are raised by the M.T.A. subway car contract. Similar questions will be raised over and over again in connection with other products and sectors of our economy. Closely related to the evolution of an industrial policy, we must draw the line and insist that this country stands for strict adherence to our international trade laws. We have always prided ourselves on the fact that we have been the world leader in advocating an open and fair international trading system, but we no longer can be the only country exercising such leadership. There must be a cooperative effort involving all of the industrialized nations of the world. This really raises an important question of competitive industrial policy. I ask that this Committee exercise leadership by insisting that trade laws be enforced and a competitive, domestic industry be given all of the support that our existing law affords.

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Senator HEINZ. That is why I phrased it as I did. I don't think Mr. Ravitch has done anything illegal. He has operated, as far as I can tell, always clearly within all the legal authorities involved.

That's the problem, as far as I can see. In spite of the fact that he was counseled, warned, that the Canadians had, from the standpoint of our U.S. trade laws, an illegal offer, there was no way he could cite a provision of law to say no.

Mr. LUNDINE. Well, Senator, there isn't a contract yet, because under the law passed by the New York State Legislature, this is subject to review. They did not use competitive bids. And the protection given to the people in that regard is, as I understand it, that a public authority's control board has to approve this.

But it is my view, and I am not giving a legal opinion on this, but it is just my view that any such contract is in clear violation of the Export-Import Act of the United States. And I'm sorry, but if a contract has two parties to it, one of them is the MTA and one of them is Bombardier, it is hard for me to distinguish that Bombardier, or the Canadian Government, is a violator, and the MTA is not. They had been warned before they entered into it. It was a matter of discussion between myself, and I gather, yourself, and the MTA prior to their decision recommending this contract.

Now, if there is a contract, I maintain that it violates the U.S. Export-Import Act.

Senator HEINZ. And the sanction though is to countervail. The sanction is to countervail. And, indeed, that may very well prove to be the case, that there will be a very substantial countervailing duty. Or there will be an antidumping duty, as the case may be,

Mr. LUNDINE. Well, I would hope that countervailing duties are not the remedy, because that is probably the worst of all possible worlds. We lose U.S. jobs. The MTA riders, if their indemnification agreement does not hold up, pay more subway fares, and everybody loses. That is why I think that the option so wisely provided under the Export-Import Act is more appealing.

Senator HEINZ. Congressman Lundine, thank you very much.

Mr. RANGEL. May I?

Senator HEINZ. Surely.

Mr. RANGEL. I would just like to thank my colleague from New York for his testimony.

If I understand what your responses were to the Chair's question, if you consider this transaction between the MTA and Bombardier to be legal, then there would be no need for any additional legislation. The fact is that the Federal Government should move in and indict those parties on the outside that participate in a legal contract and to use whatever remedies that we have for countries, allies, that have violated the agreement.

And so it bothers me when I see foreign governments manipulating to take our jobs away from us that we don't go after, as we understand these hearings were held, either enforcement of these international agreements as they are supposed to exist, if indeed this one was violated, or improving it to make certain that our industries and our workers can indeed be competitive when we are deciding who gets what contract.

And it is my understanding in talking with people from Boeing when my committee was out there, that they are subjected to the

same type of thing where they can compete and beat any seller, manufacturer as it relates to the quality of the product, but they cannot compete with the foreign finance system.

Now, I don't know whether the Senator would want to include any airline company that purchases a plane with knowledge that the foreign financing may violate some international agreement would be subject to indictment, but will include that. And then I don't know why we are buying so much of our Defense equipment from foreigners, especially those that at one time were our enemies. But we ought to take a review as to who in the Defense Department are entering into these contracts that may know that these finance agreements are not competitive with those that we are able to get in the United States.

In any event, whatever is decided, I hope that we can have hearings in my subcommittee to make certain that we do not single out those that are trying to do the best for the public, and that we include the private sector that are involved in trying to protect their stockholders that are trying to make profits, and where the stockholders happen to be citizens of the United States, that are just the purchasers and the consumers of a public transit system, that they not be singled out as a part of people that may have violated the law when clearly everyone is saying that there is no evidence, except for your testimony, that a law has been violated.

Mr. LUNDINE. Well, I agree with the gentleman exactly. And we have sat by in this country while Rohr went out of this business, General Electric went out of this business, Boeing, itself, went out of this business, Pullman went out of this business. What do other countries do? They have had a strategy between their private enterprise and their Government. That's fine if they have a strategy. And woe be unto us if we don't, because we had better wake up and develop a strategy for competition in international markets.

But the fact is, they have not played by the rules. And that is the key element.

I am not suggesting that there be indictment. I am suggesting that we enforce the international rules. And there are mechanisms, there is a relief, and there is a relief that can help the gentleman's constituents as well as my own in this case.

And I hope, and I am encouraged by today's hearing that we are going to get tough. We have had a weak trade policy since I have been here. It is only three Presidents, but I suspect we have had a weak trade policy as long as my colleague has been here. And it is time we get tough.

And that is not to say that we engage in predatory practices. It is only to say that we insist that everybody play by the rules of the game.

Senator HEINZ. Congressman, I thank you for that. I want to agree with Charlie Rangel on what he said. I don't think we should single out just one sector. I think if somebody is knowingly accepting a financing offer that clearly departs from the internationally agreed upon rules that we ought to have a method of——

Mr. RANGEL. No; I misunderstood the Chair. I thought your question to the witness was whether or not he would support language which mentioned mass transit. And when your colleague from

Michigan was pointing out that because, in part, it is being subsidized, that there should be some Federal policy.

And I am not saying I disagree with either one of you. All I am saying is that you should not single out those corporations which are quasi-public corporations when in front of my committee comes any number of multinational corporations based in the United States that may be taking advantage of the same wrongful policies that you and I would like to correct.

Senator HEINZ. As I say, I don't think the Congressman and I are very far apart.

Mr. RANGEL. I don't see where we are far apart at all.

Senator HEINZ. Thank you, gentlemen. The hearing is adjourned.

[Whereupon, at 12:58 p.m., the hearing was concluded.]

[By direction of the chairman the following communications were made a part of the hearing record:]

Mel Klenetsky

DEMOCRAT FOR SENATE

KLENETSKY DENOUNCES MTA DEAL WITH BOMBARDIER;
CALLS FOR LOW-INTEREST CREDITS TO U.S. INDUSTRY

NEW YORK, May 28--Democratic Senatorial candidate Mel Klenetsky released the following statement concerning the Metropolitan Transportation Authority's agreement to purchase 825 subway cars from the Canadian firm, Bombardier, Inc.:

"The Metropolitan Transportation Authority's deal with Bombardier should be overturned by the MTA board itself as well as by the U.S. government as against the interests of the United States, on many counts--including economic and trade warfare being waged against our nation.

"First, if the deal is permitted, it will drive another nail into the coffin of U.S. passenger railcar manufacturing. At this moment, our once magnificent transportation network is threatened with dismemberment through deregulation and the depression. Particularly hard hit have been the railroads and urban mass transit systems, at a time when new technologies make entirely feasible inexpensive, high-speed rapid transit among and within cities. Since the Budd Company is the sole passenger railcar manufacturer left in the United States and has experienced economic difficulties, it is dangerous folly to our nation's future to withhold from this company a large railcar contract such as that of the MTA.

"Second, the Budd Company has indicated that it would manufacture and assemble the cars in New York State, with 80% of the labor coming from America, versus at best 40% if Bombardier is retained. Given the depressed U.S. economy, productive jobs should not be denied to Americans because of better financing arrangements by the Canadian government.

"The financing of this raises an absolutely crucial point that I have addressed repeatedly in my campaigns for Mayor of New York City and now Senator: the question of interest rates and government subsidies.

"The Budd Company has stated that under similar financing arrangements as that made available to Bombardier by the Export Development Corporation of Canada, it could manufacture each car at $33,000 less than Bombardier. Yet our government persists in doing virtually nothing to either lower interest rates or generate credit for U.S. industry, thus grossly violating the tradition of dirigistic "American System" economics that transformed our nation from a predominantly agricultural society to the foremost industrial power on earth.

Klenetsky For Senate 56 Court Street, 7th Floor, Brooklyn N.Y. 11201
For more information call (212) 625-5970

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"Budd is now contemplating a suit to have countervailing duties imposed so as to discourage the Canadian firm and the MTA from completing the deal. But higher U.S. tariffs on foreign imports at this time is not only no answer to the more general problem of declining U.S. industry; in fact, it sets precedents for retaliation by other governments against U.S. manufactures, in what could rapidly become general trade war.

"The actual solution lies in a federal policy that would drastically lower interest rates to the range of 4-6% and channel large amounts of credit into productive industry, as embodied in the four-point program of National Democratic Policy Committee Advisory Board Chairman Lyndon H. LaRouche. This would end the depression almost overnight. It would begin the process of increasing productivity and thereby lower the cost of products, and would raise demand for expanded transportation systems, including passenger railcars. Vital to this effort would be vastly augmented funding for the Export-Import Bank, which would pay off rather quickly through higher revenues from an expanded tax base.

"All this necessarily entails the removal of Paul Volcker and his allies from the Federal Reserve Board and housecleaning of neo-Malthusians like Exim Bank head William Draper III, who is overseeing the near-demise of that vital institution. Like his father who conducted population reduction studies, Draper is an open advocate of genocidal population reduction for both the United States and the world as a whole. Destroying industrial economies is part and parcel of this policy.

"I want to also stress that, besides high interest rates, the lack of reasonable financing for industrial production is due to a shift of funds toward speculative short-term investments with high-yield returns. Prime examples of this are the corporate merger phenomena of recent years, as well as the real estate and office building boom in New York and other major cities. Billions of dollars have been siphoned away from productive investments into sheer speculation, while simultaneously enormous amounts of money have been pulled out of the United States into the Eurodollar markets.

"This shift is part of an economic warfare policy being conducted against the United States by foreign companies and and banks, and is spearheaded by Britain and Canada. The policy was first enunciated six years ago by the London Economist: America for Sale, Cheap. Foreign firms have been snatching up and replacing American industrial companies in droves, and in the process sucking U.S. capital into speculative investments.

"Bombardier fits neatly into this economic warfare picture. Despite its front as a manufacturer of transportation and recreational products, Bombardier is a branch of British and Canadian Military Intelligence engaged in economic and

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political warfare against the United States. At least three of the board members of Bombardier are directors of the Canadian Development Corporation. This Canadian "crown corporation" is not only a resource-grabbing operation against American firms in Canada, but functions as part of an international network of top financiers and oligarchs who are determined to control raw materials and energy supplies in the 1980s. I cite, for example, the dismemberment of the Texasgulf Corporation last year, which was split up between CDC and Elf Aquitaine of the socialist Mitterand regime in France.

"In the late 1970s, furthermore, Bombardier was one of the major purchasers in the reorganization of Space Research, Inc. Space Research was the subject of an extensive investigation by the noted counterintelligence journal, Investigative Leads, and was found to be an integral part of international drug- and gun-running networks. It was formed in 1968 by Edgar and Peter Bronfman, and exposed for its illegal activities in the late 1970s. By 1980, it was "reorganized" under ownership partially by Bombardier and by one Sheikh Saad Gabr, a prime funder and controller of the Muslim Brotherhood.

"Besides the Space Research connection, Bombardier has extensive overlap with the Bronfman interests, as best represented by one of its board members, Pierre Cote, who is also a director of a Bronfman subsidiary, Cadillac-Fairview. Cadillac-Fairview is a major Canadian real estate firm which, with its sister company, Olympia & York, has been conducting a land-office speculation business in Manhattan real estate in recent years. During this period, rents have risen to nearly impossible levels citywide, while manufacturing has continued to plummet to a point where industrial employment is now only about 40% of 1953 levels.

"There is an even more sordid aspect to the Bronfmans and Cadillac-Fairview. As I documented in my mayoral campaign last year, Cadillac-Fairview and the Bronfmans are prime members of the international drug cartel known as Dope, Inc., using their large cash flows to cover illegal trafficking in drugs and guns. That is why I called then, and do so now, for the enactment and enforcement of beneficiary disclosure laws of these foreign operations to ensure no illegal conduiting of drug money into the U.S. economy.

"I find it more than interesting that MTA Chairman Richard Ravitch, through his former positions in the Urban Development Corporation and HRH construction company, has had considerable interests in New York real estate. And I also find it interesting that MTA Finance Committe

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Chairman Steven Berger has so viciously attacked Budd and threatened retaliation. For it has been Berger, in his capacity as chairman of the U.S. Railway Association, who is overseeing the implementation of Conrail's "final system" plan that is totally gutting the major eastern railroad lines.

"For all those reasons, I am committed to stopping the MTA from selling out to America's enemies operating under British control, and shall seek all available means to prevent the Bombardier deal."

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Industrial
Union
Department
AFL-CIO

Howard D. Samuel, President
Elmer Chatak, Secretary-Treasurer

815 16th Street N.W.
Washington, D.C. 20006
202/842-7800

May 27, 1982

Honorable Robert Dole
Chairman
Committee on Finance
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

We are writing you to register our deep concern about the intrusion of subsidized export financing in shifting out of the United States some $960 million worth of subway cars for the New York Metropolitan Transit Authority. Ten days ago MTA announced its award of a $663 million contract for the manufacture of 825 subway cars to the Bombardier corporation of Canada with an astonishing interest rate of 9.7 percent for 15 years. The market interest rate for minimal risk 15 year loans in U.S. dollars is now 15 percent. The value of the credit subsidy involved is $352.8 million, or more than half the purchase price of the 825 Bombardier cars. Likewise in March the Kawasaki corporation of Japan was awarded an MTA contract for 325 subway cars with 12.25 percent Japanese government financing.

These $962.5 million worth of subway cars, and their associated jobs, have been awarded to foreign producers strictly on the basis of these massively and illegally subsidized export credits. It is our understanding that in both the Bombardier and the Kawasaki awards the Budd corporation was the low bidder on the price of the subway cars. Indeed, Budd had earlier delivery dates for the cars. The contracts were lost to the foreign producers as a direct result of massive export financing subsidies. The United States simply can not afford to lose industries to foreign competition when we are in fact fully competitive for the products in question. We can not afford to allow the further erosion of our industrial base in acquiescing to other countries' efforts to sustain their industry through subsidies.

While the issue is largely debated in terms of trade policy, the question of jobs is directly involved. According to our best estimates, 25,700 U.S. jobs are required to produce these subway cars. At any time in our society, but especially with 10 million Americans unemployed, we can hardly ignore the impact of 25,700 person-years of employment, or the loss of those jobs. And we can not allow our only remaining producer of subway cars -- and their many suppliers -- to be pushed out of business because the United States will turn a blind eye to the existence of an international export credit war in which our policy seems to be one of unilateral disarmament.

Vice Presidents

Shelley Appleton • Kenneth Blaylock • Peter Bommarito • Dominick D'Ambrosio • David J. Fitzmaurice • Wayne E. Glenn • Robert F. Goss • Keith Johnson • William Lucy • Dan V. Maroney, Jr. • Frank Martino • Lloyd McBride • Lenore Miller • Charles H. Pillard • Albert Shanker • Jacob Sheinkman Carl W. Studenroth • John J. Sweeney • J. C. Turner • Shannon Wall • Martin J. Ward • Glenn E. Watts • William H. Wynn

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Remedies for the initial subway car contract awards to higher-cost foreign suppliers are needed, but not all remedies are of equal value. Imposing counter-vailing duties to offset the foreign subsidies, for instance, may result in a only a moral victory -- and it could be a Pyrrhic victory as well if it does not result in bringing the work back to the United States. Our first objective must be to assure that the contracts are actually awarded to Budd and its workers as the low-cost bidders for constructing the subway cars. "Punishing" foreign governments for violating the OECD agreements on export credits or for providing illegal export subsidies will not make much difference if the American workers involved still lose their jobs.

We would urge the Congress to support measures which will bring the work back to this country and to the lowest price bidder. One means of doing this is for the Export-Import Bank, with authorization from the Treasury Department, to use its section 1912 authority to match foreign export credits below the agreed OECD rates to support an otherwise fully competitive U.S. producer. Alternatively the USTR could be encouraged to use its section 301 authority to review the unfair trade practices of foreign governments in export credits, and act directly to prevent the importation of products which would enter this country by virtue of illegal export subsidies. We believe that by bringing this work back to the United States and the low-cost bidder the U.S. government will be making its most effective contribution to future restraint internationally in holding back what is now unrestrained competition for export markets in government financed capital equipment. The alternative may well be that we lose the work, a good part of the industry and its jobs, and acquiesce in a disastrous precedent in allowing industrial piracy by subsidy in export markets.

We look forward to working with you and other Members of Congress in achieving these goals for a healthy future for American industry.

Sincerely,

Howard D. Samuel, President
Industrial Union Department, AFL-CIO

Douglas A. Fraser, President
United Auto Workers

Lloyd McBride, President
United Steelworkers of America

William Winpisinger, President
International Association of
Machinists and Aerospace Workers

William Lindner, President
Transport Workers Union of America

cc: Senate Finance Committee Members

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